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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 474.

DAVID BAILEY, JOSEPH SELIGMAN, EDWIN D. MORGAN, URIEL CROCKER, AND GEORGE S. CURTIS, APPELLANTS,

vs.

THE PACIFIC RAILROAD, CONSTANTINE MAGWIRE, JOSEPH BROWN, HUDSON E. BRIDGE, R. J. LACKLAND, T. B. EDGAR, NELSON C. CHAPMAN, OLIVER A. HART, B. M. CHAMBERS, DAVID RANKIN, BENJAMIN STICKNEY, E. O. STANARD, ANDREW PIERCE, AND WILLIAM M. McPHERSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED AUGUST 15, 1874.

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1 UNITED STATES OF AMERICA,
Eastern District of Missouri, sct.:

Pleas before the honorable the circuit court of the United States in and for the eastern district of Missouri, at the March term thereof, A. D. 1874.

DAVID BAILEY ET AL., PLAINTIFFS,
vs.
PACIFIC RAILROAD ET AL., DEFENDANTS. } In equity.

Be it remembered that heretofore, to wit, on the 2d day of October, A. D. 1871, there was filed in the office of the clerk of the circuit court of the United States for the district of Missouri, a bill in equity, in words and figures following, to wit:

Bill.

In the circuit court of the United States for the district of Missouri.

DAVID BAILEY, GEORGE S. CURTIS, JOSEPH Seligman, Edwin D. Morgan, and Uriel Crocker,
vs.
THE PACIFIC RAILROAD, CONSTANTINE Maguire, Joseph Brown, Hudson E. Bridge, R. J. Lackland, T. B. Edgar, Nelson C. Chapman, Oliver A. Hart, B. M. Chambers, David Rankin, Benjamin Stickney, E. O. Stanard, Andrew Pierce, and Wm. M. McPherson. } In equity.

To the judges of the circuit court of the United States for the district of Missouri, sitting in equity.

David Bailey, George S. Curtis, Joseph Seligman, Edwin D. Morgan, and Uriel Crocker bring this their bill against the Pacific Rail-
2 road, a corporation incorporated and organized under the laws of the State of Missouri, having its offices and transacting its usual business in said State, and a citizen thereof, and against Joseph Brown, John C. Porter, Andrew Pierce, Hudson E. Bridge, R. J. Lackland, T. B. Edgar, Nelson C. Chapman, Oliver A. Hart, B. M. Chambers, David Rankin, B. Stickney, E. O. Stanard, and Constantine Maguire, each and all of said defendants, citizens of the State of Missouri.

And thereupon your orators complain and say that he, the said David Bailey, is a citizen and resident of the State of Illinois, and that the said Joseph Seligman and E. D. Morgan are citizens and residents of the State of New York, and the said Uriel Crocker and George S. Curtis are citizens and residents of the State of Massachusetts, and that the defendant, the Pacific Railroad, is a corporation incorporated by, organized and operating under, the laws of the State of Missouri, is a citizen of said State of Missouri, and in pursuance of said laws and its charter is engaged in managing and operating a railroad from the city of St. Louis to a point in the western boundary-line of the State of Missouri, in the county of Jackson, known as State line, and that by the provisions of the said charter of said company, and the laws of Missouri, all the property held, used, or owned by said corporation, is part of and composes its capital stock, which capital stock is divided into shares of

$100 each, and said capital stock, property, and profits, by contract between said State and the shareholders of said company, are vested in the respective shareholders of the company forever in proportion to their respective shares, and the same, and all property of said corporation, are declared by law to be personal estate.

By said contract it was further enacted that when any person
3 shall cease to be a stockholder he thereupon ceases to be a member of said Pacific Railroad Company; and by said charter and contract the capital stock of said corporation was made $10,000,000, which was divided into shares of $100, but at present the total subscribed capital stock is composed of and is represented by 36,298 shares.

That said railroad extends for the distance of 283 miles, and runs through the counties of St. Louis, Franklin, Ga'conade, Osage, Cole, Moniteau, Morgan, Pettis, Cass, and Jackson, and through the limits of 72 incorporated towns; that only $\frac{37}{283}$ of the length of said road are within the limits of St. Louis County, and less than $\frac{1}{100}$ within the corporate limits of the city of St. Louis; that only $\frac{1}{100}$th in value of the property of said corporation is within the corporate limits of the city of St. Louis, and only $\frac{37}{283}$ within the county of St. Louis; the remainder of said property being locally situate outside of said city and county.

Your orators would further represent that they are informed and believe that a large number of said shares were, on the 6th day of Sept'r, 1869, held by persons who are citizens of other States than the State of Missouri; that only a small proportion of said shares were held by persons who had their residence within the city of St. Louis; that a large proportion of said shares were then held by persons who had their residence in other counties in the State of Missouri than St. Louis County.

Your orator would respectfully represent that the Pacific Railroad was originally formed and organized and incorporated under act of the general assembly, entitled "An act to incorporate the Pacific Railroad," approved March 12, 1849, here shown to the court and made part of this bill, the same as if incorporated herein.

That afterwards the rights and privileges of said Pacific Rail-
4 road were altered and amended by an act of the general assembly entitled "An act to amend an act entitled 'An act to incorporate the Pacific Railroad,'" approved March 1st, 1851, which last act was duly accepted and assented to by the Pacific Railroad, by a vote of a majority in number and interest of the stockholders of said company, duly assembled in general meeting for that purpose, a copy of which last-mentioned act is here shown to the court and made part of this bill, the same as if herein actually inserted.

And among the other provisions of this act was the following, to wit:

"SEC. 6. The capital stock, together with all machines, wagons, cars, engines, or carriages belonging to the company, together with all their works and other property, and all profits which shall arise from the same, shall be vested in the respective shareholders of the company forever, in proportion to their respective shares, and the same shall be deemed personal estate, and shall be exempt from any public charge or tax whatever for the period of five years from the passage of this act."

That the Congress of the United States did, on the day of June, 1852, pass an act entitled "An act granting the right of way to the State of Missouri, and a portion of the public lands to aid in the construction of certain railroads in said State." Which act was duly approved June 10th, 1852. A copy of said act is here shown to the court, and made part of this bill, the same as if herein actually inserted.

That on the day of December, 1852, the general assembly of the

State of Missouri passed an act entitled "An act to accept a grant of land made to the State of Missouri by the Congress of the United
5 States, to aid in the construction of certain railroads in this State, and to apply a portion thereof to the Pacific Railroad," which was duly approved Dec. 25th, 1852, a copy of which is shown to the court and made part of this bill, the same as if herein directly inserted. And among the provisions of this act was the following, to wit:

"SEC. 12. The said Pacific Railroad and the said Southwestern Branch Railroad shall be exempt from taxation respectively until the same shall be completed, opened, and in operation, and shall declare a dividend when the road-bed, buildings, machinery, engines, cars, and other property of such completed road, at the actual cash value thereof, shall be subject to taxation at the rate assessed by the State on other real and personal property of like value; and for the purpose of ascertaining the value of the same it shall be the duty of the president of said company on the first day of February in each year, after such road is completed, opened, and put in operation, and declares a dividend, to furnish to the auditor of the State a statement, under his oath, made before and certified by some officer authorized to administer oaths, of the actual value of the road-bed, buildings, machinery, engines, cars, and other property appertaining to such completed road, and from said statement so furnished the auditor shall charge said company with the amount appearing to be due to the State, according to the statement furnished as herein required by the president of the company; and in case said company shall fail to pay into the State treasury, within thirty days after the first day of December in each year, the amount charged against said company, as aforesaid, said company shall forfeit and pay to the State of Missouri, in addition to the sum with which said company may stand charged by the auditor, ten per cent. per month, after the expira-
6 tion of said thirty days, on the amount charged to said company; which sum charged against said company, together with the ten per cent. per month hereinbefore specified, may be recovered in the name of the State of Missouri, by civil action in any court of competent jurisdiction; and should the president of said company fail to make out and furnish to the auditor of the State a statement as herein required, said company shall forfeit and pay to the State ten thousand dollars for such failure, which may be recovered in the name of the State of Missouri, in any court of competent jurisdiction, provided that, if said company shall fail for the period of two years, after said roads respectively shall be completed and put in operation, to declare a dividend, that then said company shall no longer be exempt from the payment of said tax, nor from the forfeitures and penalties in this section imposed."

And said last-mentioned act was accepted by said Pacific Railroad Company on the day of 1853, within six months after the passage of said act; and that said Pacific Railroad Company executed said acceptance under their corporate seal, and filed the same in the office of the secretary of state, as therein provided. And the said Pacific Railroad Company did receive said grant, and in good faith proceed to carry out the object and purposes of the same, and did perform all the acts therein required of it. And the said Pacific Railroad did lay out, construct, and build said Southwestern Branch as therein required, and did, in consideration of the divers contracts and grants therein expressed, among others, in consideration that the said State did thereby grant to said railroad company total exemption from taxation of any and
7 every kind until said Pacific Railroad should be completed, and until it should declare a dividend, and that after the completion of

said road it should be liable to taxation as therein provided for, and liable to no other taxation; and it was further provided that if said corporation did not, within two years after the completion of said roads respectively, declare a dividend, then the road should be liable to the taxes therein described, and to no other.

In consideration of said exemption, among other things said railroad undertook the onerous duties and responsibilities required by the laws of the State of Missouri of railroads, and undertook and did assume the construction of said Southwest Branch.

Your orator further shows that said Pacific Railroad was not completed, open, and in operation until April 5th, 1866, and said Southwest Branch was not completed and in operation until the day of 1871; that said Pacific Railroad has never declared a dividend and has never been able to do so, although it has used its utmost endeavor in good faith.

And the complainants are advised that it has long been the construction of said act by the supreme tribunal of the State of Missouri, that said railroad company was liable to no other taxes than those therein mentioned, and said construction was settled long before your orator became a stockholder in said corporation.

Your orators further represent that they are the bona-fide owners of stock of said company to a large amount, to wit: The said David Bailey to the amount of fifty shares, the said Uriel Crocker to the amount of eight hundred shares, the said Edwin D. Morgan to the amount of
8 one thousand shares, and the said George S. Curtis to the amount of six hundred shares, and the said Joseph Seligman to the amount of one thousand shares, all of which were acquired by your orators long before the attempted seizure and sale of the property of said company as herein set forth.

Your orators further represent that, by said acts of the legislature, the said State of Missouri did enter into a contract with the Pacific Railroad Company, and the shareholders therein, that the property should forever be exempt from all taxes except those mentioned in said act of Dec. 25th, 1852, and that, until said Pacific Railroad Company should declare a dividend, that all the property and the capital stock of the Pacific Railroad should be exempt from all taxation except the taxes therein enumerated; and that no assessment for the purpose of taxation should be made except in the manner therein provided; and did thereby contract and agree that said Pacific Railroad, its property and capital stock, should be exempt from assessment by any authority under the laws of said State except under said act.

All of which was well known, and all said facts and said contract and exemption from taxation were well known to each and all of the defendants, as well as to the board of assessors of St. Louis County for the year 1869; but notwithstanding they knew that under said contract, and the laws of the State of Missouri, said corporation, its stock and property, were not liable to assessments or taxation at their hands, and that said contract had been construed, and said exemption and rights had for a long time previous been declared, by the highest tribunal and court of last resort in the State of Missouri; yet said board of
9 assessors, claiming to proceed under an act of the general assembly entitled "An act concerning the assessment and collection of revenue," approved March 19th, 1866, (see Wagner's Statutes, p. 1159,) which did not and never was intended, as your orators are informed and believe, to apply to railroads, did, on the 6th day of September, 1869, assess said Pacific Railroad as follows, and did make an entry

on their assessment-books for the year 1869, by which they assessed the capital stock of said company at the sum of $875,57, for the particulars of which assessment see Exhibit C, (which your orator prays your honors to consider a part of this bill,) falsely claiming that said act did authorize their said proceedings; but your orator would respectfully represent that said act did not authorize said proceedings, but was intended to apply to moneyed and business corporations having a fixed and definite locality for the transaction of all their business; nor did any other act authorize or intend to authorize said pretended assessment; and your orator would respectfully represent that said act of the legislature, so far as it did by the general terms used authorize said proceedings, was a law impairing the obligation of said contract between the State of Missouri and the said Pacific Railroad, and the stockholders therein.

Your orators would represent that said board of assessors did certify the said assessment-list to the county court of the county of St. Louis, and the clerk of said court, although well knowing that said assessment was unauthorized, illegal, and void, did thereupon charge the following taxes against said company, on said tax-book, the sum of $24,525. (For the items and particulars of said charge, see a copy from said tax-book hereto attached, made a part hereof, and marked "Exhibit .")

That by said assessment the said board did not assess the said
10 company on its entire number of shares, but deducted from said total number of shares 11,878 shares as held by counties and cities in their corporate capacity, and others at that time, thereby discriminating in favor of certain shareholders as against others equally entitled to the benefit of all exemption in the assessment and taxation of said shares. That no part of the said shares so pretended to be assessed on the property of said company, but are each and all the individual and separate property of the stockholders, over which the said corporation has no control; and that your orator and other stockholders have never been assessed upon their said shares, in any manner or form whatsoever, in said State of Missouri; but each and all of your orators are subject to taxation upon their personal estate in the States where they respectively reside.

Your orators would further represent that the power to assess, levy, or collect taxes by or for the city of St. Louis was derived solely from and governed entirely by an act of the general assembly entitled "An act to revise the city charter of the city of St. Louis," approved March 13th, 1867, a copy of which is here shown to the court, and is made a part of this bill the same as if herein directly inserted; and by said act it was provided that said city of St. Louis should have power to levy taxes on property locally situated within the limits of the city of St. Louis, and under said city charter and the laws of the State. Property not locally situate within said limits is without the jurisdiction of said city for any purpose of taxation, all of which was well known to the said county clerk, and although he well knew that less than $\frac{1}{100}$th in value of said Pacific Railroad, and its property, was locally situate within said city of St. Louis, yet he charged taxes for city purposes to the amount of $13,136.25, amounting to 1½ per cent., and being as alleged for
11 the ordinary municipal purposes, including the construction of sewers and other matters purely local to said city, and assessed said tax of 1½ per cent. on the dollar on the entire property of the road as represented by its capital stock, and the said county clerk did charge and enter on said tax-books a tax for the county of St. Louis of

$3,503.00, a tax of $\frac{40}{100}$ per cent., and did charge a tax for the public schools of the State of Missouri of $\frac{40}{100}$ per cent., amounting to the sum of $3,503.00, and did charge and enter a tax of $\frac{25}{100}$ per cent. for State revenue, and $\frac{25}{100}$ per cent. for State interest fund, amounting in all to a tax of $\frac{50}{100}$ per cent., and to the sum of $4,378.75 for State purposes; although he well knew that he, the city, and its officers were forbidden by law to levy or assess any tax thereon.

Although it was well known to all the officers of the Pacific Railroad, including the president and directors, that each and all of said taxes were unjust, illegal, unauthorized by law, null and void, and destructive of the franchises of said corporation; and although they, the said directors and officers, were the trustees and confidential agents of all the stockholders, and had undertaken and promised to protect the interests of all the stockholders, and more especially of stockholders like your orators, non-residents of the State of Missouri, and who were relying exclusively upon these said directors and other officers to protect and defend their property from such waste; yet they, each and all, utterly failed and neglected to appeal from said enormous taxation, or to take any steps to release said company from said taxation, or prevent said unjust and illegal charges from being collected, and were thereby guilty of a breach of trust.

Your orators would further represent that said defendant Constantine Maguire is a citizen of the State of Missouri, and a resident of
12 the city of St. Louis therein; that he is collector of the State, county, city, and school taxes; that on the 15th day of August, A. D. 1871, he was in possession of a tax-bill for the sum of $24,521, marked "Exhibit A," hereto annexed, and made part of this bill the same as if inserted at length herein, and well knowing the same to be illegal and void, and based upon said pretended assessments hereinbefore specifically mentioned, did seize and take possession of the following articles, each the property of the Pacific Railroad, and a part of its capital stock, and each one of which your orators have a vested interest in proportion to their number of shares of stock by them severally held, as hereinbefore set forth, which articles are as follows:

"Three hundred thousand feet of lumber, more or less, nearly all hard wood. Contents of store-room: Large lot of bolts, nuts, washers, spikes, and nails, in kegs; ten tons, more or less, of bar and sheet-iron, and cast-steel; assorted brasses; lot of locomotive flues; springs, packing, hose, & rope; eight head-lights; lot of lanterns; a large assortment of railroad material and furnishing goods; lot of boxes of candles."

And did, on the 19th day of August, 1871, advertise the same for sale, a copy of which advertisement is hereto annexed, marked "Exhibit B," which your orators pray may be held and considered as part of this bill the same as if asserted at length herein.

And the said Maguire threatens and is about to sell the property aforesaid, as your orators are informed and believe.

Notwithstanding all these illegal proceedings, pretended assessments, charges, seizure, and advertisement, were well known to the said Joseph Brown, Andrew Pierce, Oliver A. Hart, N. C. Chapman, E. O.
13 Stanard, T. B. Edgar, Wm. M. McPherson, Hudson E. Bridge, Benjamin Stickney, B. M. Chambers, and David Rankin, the directors of said company, they, the said directors, still failed and neglected to do anything to save said corporate property from sale, and protect the vested interests of your orators therein.

That said property, so seized and about to be sold, is of great value,

to wit, of the value of not less than fifty thousand dollars, much of it selected with great care for the especial uses of said company, and difficult, if not impossible, to replace in the market, and, as your honors will see, by inspection of the list, is composed of innumerable articles—a character of property that it will be utterly impossible to trace, and, as your orator believes, if such sale is made, will be scattered among innumerable purchasers at said sale and wholly lost.

Your orator would respectfully show that said articles, as they are informed and believe, are indispensible to the completion of certain repairs for the running and operation of the said railroad, and a sale of the same will entail a loss upon your orators and other stockholders of said company that it will be impossible to measure, and which in fact is not susceptible of any compensation or redress to them by any action which they can maintain at law, and that if said sale is allowed to proceed even the company is without remedy.

Your orators further represent that, after said advertisement, they learned for the first time that said pretended tax had been assessed and charged against said company, and that the property of said company had been seized; that your orator David Bailey at once caused application to be made to the officers of said company, requesting and demanding that they should take immediate steps to prevent the sale of said corporate property, and the consequent irreparable damage
14 to him and to the other stockholders, and caused them to be notified that the demand was made not only for himself but other stockholders; but notwithstanding said demand the said officers and directors, though each and all well knowing that said taxes were illegal and unjust, declined and have refused and still refuse to take any steps to prevent the collection of said tax, or the sale of said property, and your orators are informed and believe that the officers of said company will either suffer said property to be sold or will pay the said illegal demand from the general fund of said company, to save the same from sale.

And your orator would further represent that under the laws of the State of Missouri your orators will have no remedy, either in their own behalf or in any manner by which their vested interests in said property may be protected and saved, if the said property is sold or money paid out of the corporate effects.

Your orator would respectfully represent that there are over eight hundred shareholders in said company; that a large number of said shareholders are and were at the time of such assessment non-residents of the State of Missouri; that each one has an interest in the said property so seized only in proportion to the number of shares held by him, and such interest being subject to all the debts and liabilities of said company, many of which do not mature for many years, an action at law cannot be maintained; that in order to even attempt the redress of said injury, resulting from said sale or the payment of said tax, would require several hundred actions, requiring many years for their determination.

Your orators further represent that many who were officers and directors of said Pacific Railroad Company when said assess-
15 ment was made, have long since ceased to be officers of said company, and some of them are dead, and that by the decision of the courts of the State of Missouri your orators are advised that said company, in its corporate capacity, is utterly without remedy to recover said property or its value, however illegal, unauthorized, and unjust said tax may be.

Your orators further represent that no portion of the stock held by your orators Bailey, Crocker, & Morgan, respectively, was pretended to be assessed and taxed, but the same was held and owned at the time of said assessment by the city of St. Louis, and the total amount then held by said city, amounting in the aggregate to over five thousand shares, was deducted from the aggregate of capital stock so pretended to be assessed as not subject to taxation; yet if said sale is allowed to proceed, or if said company be allowed to pay the same out of the general corporate property, the respective interests of your orators in the corporate property so seized by said collector will be sacrificed, and a burthen of loss imposed, to which neither the shares owned by them nor the corporate property of said company in which they as shareholders have an interest are in any manner subject.

That the entire amount of eight hundred shares of stock in said company owned by your orator Uriel Crocker was derived by purchase from said city, and was not at the time of such pretended assessment subject to taxation as being the property of said city; that the entire amount of one thousand shares of stock in said company owned by your orator Edwin D. Morgan was also derived by purchase from said city in a similar manner, and that the stock of said Bailey was in no manner subject to taxation, nor was the same assessed.

16 That a large portion of the stock held by your orators Curtis and Seligman was also derived from said city and was a part of the stock so exempted in said pretended assessment, but the said Selig—— was also the owner of a large amount of stock not derived from said city, and which is included within such pretended assessment, of which he is still the lawful owner.

And your orators, bringing this bill for themselves, and all other stockholders non-residents of the State of Missouri who may choose to become parties to this bill, several hundred in number, to be made parties for the purpose of preventing a great multiplicity of suits, for the purpose of preventing irreparable injury to the vested rights of your orators, and such other stockholders who may choose to become parties hereto, and for the purpose of preventing the destruction of the franchises of said Pacific Railroad, prays your honors to take cognizance of the matters of complaint herein stated and will declare said taxes illegal, null, & void, and that said Pacific Railroad Company, its officers and agents, be enjoined from paying such pretended taxes, and that the said Constantine Maguire, and all persons acting under him, be enjoined from proceeding to collect said taxes, or from any sale or disposition of the corporate property hereinbefore described, and which he is about to sell as aforesaid. That a temporary injunction issue restraining and enjoining the defendants respectively as above prayed, and that on final hearing hereof the said injunction may be made perpetual by the order and decree of this court, and that such other order and decree may be entered, and such other relief granted the complainants, as the nature of the case may require, and according to the principles of equity & justice, & in order to prevent litigation, promote the ends of justice, and secure the rights of your orators and other stockholders in said corporation.

17 And to the end that full justice may be done, your orators pray that a writ of subpœna, commanding the said Joseph Brown, Andrew Pierce, N. C. Chapman, E. O. Stanard, T. B. Edgar, Oliver A. Hart, Benj. Stickney, David Rankin, B. M. Chambers, R. J. Lackland, Hudson E. Bridge, and William M. McPherson, and the said Pacific Railroad Company and the said Constantine Maguire, defend-

ants herein, to appear before the court at the ensuing term thereof and answer without oath (which is expressly waived) the allegations of this bill; and as in duty bound your orators will ever pray.

GEO. E. LEIGHTON,
Solr. for Complt.

David Bailey, one of the complainants in the foregoing bill of complaint, being first duly sworn, upon oath says that has read the foregoing bill and is familiar with the allegations therein, and that said allegations which are made as of his own knowledge are true, and those made as of information and beleive he beleives the same to be true.

DAVID BAILEY.

Sworn to and subscribed before me this 23d day of August, A. D. 1871.

[SEAL.]

HENRY B. O'REILLY,
Notary Public, St. Louis Co., Missouri.

17¼ *Carondelet township—Bill* 441.—*State and county taxes for* 1869.

Received of Pacific Railroad $\frac{}{100}$ dollars, being the amount of State and county taxes for the year 1869, in St. Louis County, on real estate, as below detailed, and personal property.

Addition.	Block.	Lot.	Street.	Front.	Deep.	Acres.	100th.	Survey.	Sect.	Tp.	Range.	North.	East.	South.	West.	Specified valuation.
.....	4	.....	.....	.....	.....	4	50	.....	30	44	6	Sur. 3170; Sappington sur., 1197, to a point.				100
												Personal.....				.....
												Total.....				100

Designation of taxes.		Assessed values.	Amount of taxes.
			Dolls. Cts.
State revenue	0, 25 p. c.	.....	.....
State interest	0, 25 p. c.	100	50
Total State	0, 50 p. c.	.....	.....
Exempt from county taxes		.....	.....
County taxes, 0, 45 p. c.		100	45
Total		.....	95

By , Collector.
, Deputy.

St. Louis County, 1869.

(Indorsed:) True copy from tax-books of 1869.

WM. H. HEATH, *Auditor.*
By G. F. RAUSSER, *Clk.*

17½ *City book* 4—*Bill* 517.—*State, county, city, and school taxes for* 1870.

Received of Pacific Railroad $\frac{}{100}$ dollars, being the amount of State, county, city, and school taxes for the year 1870, in St. Louis County, on real estate, as below detailed, and personal property.

City block.	Street or avenue	Front.	Deep.	Addition or survey.	Block.	Lot.	North.	East.	South.	West.	Specified valuation.
60 % amount of capital stock											875,750
Personal											875,750
Total											875,750

Designation of taxes.		Aggregate of assessed value.	Amount of taxes.
State revenue	0.25 p. c		
" interest	0.25 p. c		
			Dolls. Cts.
Total	0.50 p. c	875,750	4,378 75
Exempt from county, school, & city tax			
Subject to county, school, and city tax		875,750	3,503 00
County taxes, 0.40 p. c			3,503 00
School tax, 0.40 p. c			
Special exemption for city			
City—gen'l, police			13,136 25
Harbor, sewer—total, 1.50 p. c			
Lafayette park taxes, 0.10 p. c			
" " " 0.20 p. c			
Total			24,521 00

By , Collector.
, Deputy.

St. Louis County, , 1870.

(Indorsed:) True copy from tax-books of 1870.
WM. H. HEATH, *Auditor.*
By JNO. B. PRESWICK, *Cle'k.*

18 EXHIBIT.

City and county collector's sale of Pacific Railroad property.

By virtue of two different tax-bills assessed against the Pacific Railroad, amounting in the aggregate to the sum of twenty-four thousand five hundred and twenty-one dollars and ninety-five cents, and being for State, county, school, and city taxes for the years 1869 & 1870, and placed in my hands for collection, according to law, I have levied upon and seized, as the property of the said Pacific Railroad, the following-described personal property, to satisfy said tax-bills, with interest, penalty, and costs, to wit:

300,000 feet of lumber, more or less, nearly all hard wood; contents of store-room: large lot of bolts, nuts, washers, spikes, and nails, in kegs; ten tons (more or less) of bar and sheet iron and cast-steel; 2,000 pounds (more or less) assorted brasses; lot locomotive flues, springs, packing, hose, and rope; eight head-lights; lot of lanterns; a large assortment of railroad material and furnishing goods; lot of boxes of candles; and will, on Tuesday, the 29th day of August, 1871, on the ground of the Pacific Railroad in St. Louis, expose for sale and sell the said property
19 to the highest bidder, for ready money, at public vendue, between the hours of nine in the forenoon and five in the afternoon of said day.

C. MAGUIRE,
State and County Collector.

ST. LOUIS, *August 19th*, 1871.

And at the October term, A. D. 1871, of the circuit court of the United States for the district of Missouri, begun and holden at the city of St. Louis, in and for said district, on the first Monday, the 2d day, of October, A. D. 1871, the following proceedings were had in this cause on said last-named day, to wit:

DAVID BAILEY ET AL., PLAINTIFFS,
vs.
PACIFIC RAILROAD ET AL., DEFENDANTS. } In chancery.

This day come the plaintiffs, by their solicitor, and file their bill in chancery against the defendants in this cause; and, on motion of said solicitor, it is ordered that a subpœna in chancery be issued in this cause, returnable to rules on the first Monday of November next.

Whereupon a subpœna in chancery issued, in words & figures following, to wit:

Subpœna.

MISSOURI DISTRICT, *set:*

The President of the United States to the Pacific Railroad, Constantine Maguire, Joseph Brown, Hudson E. Bridge, R. J. Lackland, T. B. Edgar, Nelson C. Chapman, Oliver A. Hart, B. M. Chambers, David Rankin, Benjamin Stickney, E. O. Stanard, Andrew Pierce, and Wm. M. McPherson, greeting:

You are hereby commanded to be and appear at rules to be held at the office of the clerk of the circuit court of the United States for the districts of Missouri on the first Monday of November next, at the city of St. Louis, then and there to answer the bill of complaint of David Bailey, a citizen of the State of Illinois; Joseph Seligman and Edwin D. Morgan, citizens of the State of New York; and Uriel Crocker and George S. Curtis, citizens of the State of Massachusetts, filed against you on the second day of October, 1871. Hereof fail not.

Witness the honorable Salmon P. Chase, Chief-Justice of the United States, the second day of October, 1871.

Issued at office in the city of St. Louis, under the seal of said court, the day and year last aforesaid.

[SEAL.] AUSTIN DRAKE, *Clerk.*

MEM.—The defendants to enter their appearance in this suit in the clerk's office on or before the day at which the writ is returnable; otherwise the bill may be taken pro confesso.

AUSTIN DRAKE, *Clerk.*

Upon which subpœna in chancery the marshal of the United States made return in words and figures following, to wit:

Marshal's return.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

Executed this writ by delivering a copy of the subpœna in chancery,

together with a copy of the petition, to the within Constantine Maguire Oct'b'r 14, and by delivering a copy of the subpœna in chancery to Joseph Brown, Oliver A. Hart, B. M. Chambers, David Rankin, Andrew Pierce, Joseph Brown, president of the Pacific Railroad Company, R. J. Lackland, Hudson E. Bridge, T. B. Edgar, E. O. Stanard, October 21st, 1871, and to Wm. B. McPherson October 23d, 1871, and by delivering copies of the subpœna in chancery to the within-named Benjamin Stickney and Nelson C. Chapman, at St. Louis, within the eastern district of Mo., October 25th, 1871.

21

C. A. NEWCOMB,
U. S. Marshal, E. D. Mo.,
By I. SAUER, *Deputy*.

And under date of October 2d, A. D. 1871, the following entry appears upon the record of said circuit court, to wit:

The following memorandum of proceedings had before the honorable John F. Dillon, circuit judge of this court, of date the 27th day of August, A. D. 1871, was this day received by the clerk and filed, to wit:

In circuit court U. S. for the districts of Missouri, at chambers, in city of Davenport, August 27th, 1871.

DAVID BAILEY ET AL.,
vs.
THE PACIFIC R. R. CO. ET AL.

The complainants, by Mr. Leighton, their solicitor, presented the bill in this case to the circuit judge, at his chambers, for the allowance of a preliminary injunction as therein prayed, which application was resisted by Mr. Rombauer, solicitor for the defendant, Constantine Maguire, the county collector. The undersigned is of opinion that no sufficient equity is shown for the allowance of an injunction against the collector of the State tax, amounting to $4,378.75, nor the county and school-tax, amounting each to $3,503.00, & as to these taxes the injunction is denied.

As to the taxes levied by the city of St. Louis upon all the shares of stock of the road, representing all the capital stock and property of the railroad company, without regard to the residence of the stockholders or the situs of the property being within the limits of the city corporation, no law or color of authority for the levy & collection of such tax by or for the benefit of the municipality is shown, and as to such tax, amounting in all to $13,136.25, a temporary injunction will be ordered as prayed, but with leave to the defendant to move to dissolve the same, or to demur to the bill during the first week of the next October term of the court.

22

The injunction will be issued by the clerk, on the filing of a bond, with approved sureties, conditioned to pay all damages which may be caused by the suit, the bond to be in the penal sum of $5,000, the property to remain in the hands of the collector. This order is made upon condition that the complainants enter into a stipulation consenting that the sale advertised by the collector shall be adjourned (if the injunction is issued) until the 14th day of October, A. D. 1871.

JOHN F. DILLON, *Circuit Judge*.

And afterwards, at said October term, A. D. 1871, of said circuit court,

the following further proceedings were had in this cause, on Wednesday, the 4th day of October, A. D. 1871, to wit:

DAVID BAILEY ET AL., PLAINTIFFS,
vs.
THE PACIFIC RAILROAD ET AL., DEFENDANTS. } In chancery.

This day come the defendants, by their solicitor, and on motion of said solicitor it is ordered that leave be granted to said defendants to plead herein on or before the first day of November next, with the privilege reserved to said defendants, at any time during the present term of this court, to move to dissolve the preliminary injunction heretofore ordered herein.

23 And afterwards, at said October term, A. D. 1871, of said circuit court, the following further proceedings were had in this cause, on Friday, the 29th day of March, A. D. 1872, to wit:

DAVID BAILEY ET AL., PLAINTIFFS,
vs.
PACIFIC RAILROAD ET AL., DEFENDANTS. } In chancery.

This day comes the defendant Constantine Maguire, by his solicitor, and files his demurrer to the bill of plaintiffs herein.

The demurrer, filed as aforesaid, is in the words & figures following, to wit:

Demurrer.

In the circuit court of the United States, districts of Missouri.

DAVID BAILEY AND OTHERS, COMPLAINANTS,
vs.
THE PACIFIC RAILROAD, CONSTANTINE MAGUIRE, & others, defendants.

The demurrer of Constantine Maguire, one of the defendants to the bill of complaint of David Bailey et al., complainants:

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill contained to be true, in such manner and form as the same are therein and thereby set forth and alleged, does demur to the said bill, and for cause of demurrer shows that the said complainants have not by their said bill made such a case as entitles them in a court of equity to any relief of or from this defendant or against him touching the matters contained in the said bill, or any of such matters. Wherefore, and for divers other good causes of demurrer appearing in the said bill of complaint, this defendant doth demur to the said bill and to all the matters and things therein contained, and prays the judgment of this honor-
24 able court whether he shall be compelled to make any further or other answer to the said bill, and humbly prays to be hence dismissed with his reasonable costs in this behalf sustained.

RODERICK E. ROMBAUER,
Solicitor for this Defendant.

I hereby certify that the foregoing demurrer in the said-entitled cause is, in my opinion, well founded in point of law.

H. A. CLOVER,
Of Counsel for Defendant above named.

The complainant in the above-entitled cause, by his solicitor, hereby waives the affidavit of the defendant Constantine Maguire, required by the rules of this honorable court upon the interposition of the above demurrer.

GEO. E. LEIGHTON,
Sol. for Complts.

And afterwards, at the September term, A. D. 1873, of the circuit court of the United States for the eastern district of Missouri, begun and holden at the city of St. Louis, in and for said district, on the 3d Monday, the 15th day of September, A. D. 1873, the following further proceedings were had in this cause, on Monday, the 20th day of October, A. D. 1873, to wit:

DAVID BAILEY ET AL., PLAINTIFFS,
vs.
PACIFIC RAILROAD ET AL., DEFENDANTS. } In chancery.

This day come the plaintiffs, by their solicitor, and by leave of court file an amended bill herein.

The amended bill, filed as aforesaid, is in the words & figures following, to wit:

25 *Amended bill.*

In the circuit court of the United States for the eastern district of Missouri, in the eighth circuit.

DAVID BAILEY, JOSEPH SELIGMAN, EDWIN D. Morgan, Uriel Cro'ker, and George B. Curtice,
vs.
THE PACIFIC RAILROAD, CONSTANTINE MAguire, Joseph Brown, Hudson E. Bridge, R. J. Lackland, J. B. Edgar, Nelson C. Chapman, Oliver A. Hart, B. M. Chambers, David Rankin, Benjamin Stickney, E. O. Stanard, Andrew Pierce, and Wm. M. McPherson.

To the judges of the circuit court of the United States for the eastern district of Missouri, in the eighth circuit:

David Bailey, of Chicago, and a citizen of the State of Illinois; Joseph Seligman and Edwin D. Morgan, of the city of New York, and citizens of the State of New York; and Uriel Crocker and George B. Curtice, of the city of Boston, and citizens of the State of Massachusetts, upon leave of the court first had and obtained for that purpose, bring this their amended bill against the Pacific Railroad, Constantine Maguire, Joseph Brown, Hudson E. Bridge, R. J. Lackland, J. B. Edgar, Nelson C. Chapman, Oliver A. Hart, B. M. Chambers, David Rankin, Benjamin Stickney, E. O. Stewart, Andrew Pierce, and William M. McPherson, of the city of St. Louis, and citizens of the State of Missouri.

And thereupon your orators complain and say that the said Pacific Railroad is a corporation, under the name and style aforesaid, duly created and organized under and by virtue of an act of the general assembly of the State of Missouri entitled "An act to incorporate
26 the Pacific Railroad," approved March 12th, 1849, and an act entitled "An act to amend the act entitled 'An act to incorporate the Pacific Railroad,'" approve' March 1st, 1851; and "An act to accept a grant of land made to the State of Missouri by the Congress of the United States, to aid in the construction of certain railroads in this State, and to apply a portion thereof to the Pacific Railroad," approved December 25th, 1852. All of which your orators ask may be made and treated as a part of this bill. That it is the owner of and engaged in operating a railroad under the authority of said acts, extending from the city of St. Louis to the western boundary of said State of Missouri, at Kansas City; that said company is also the owner of a large number of engines, cars, and other rolling-stock of various kinds, and a large quantity of railroad supplies, including three hundred thousand feet of lumber; a large lot of bolts, nuts, washers, spikes, and nails, in kegs; ten tons of bar and sheet iron and cast steel; eight hundred pounds brasses; seventy-five locomotive flues; one hundred car-springs; twenty-eight head-lights; one hundred lanterns; fifty boxes of furnishing goods, and many other articles known as railroad supplies.

Your orators further represent to your honors that, by the charter of said company, its capital stock consists of ten millions of dollars, divided into shares of one hundred dollars each; that three millions six hundred thousand dollars of said stock has been subscribed for on the books of said company, and certificates have been issued for the same; that the remainder of said stock has never been subscribed for or otherwise disposed of; that, by the provisions of the sixth section of the aforesaid act, approved March 1st, 1851, "the capital stock, to-
27 gether with all machines, wagons, cars, engines, and carriages, belonging to the company, and all their works and other property, and all profits which shall arise from the same," are vested in the respective shareholders of the company forever, in proportion to their respective shares; and the same is thereby made and declared to be personal estate, and exempt from all public charges and taxes whatsoever for the period of five years from and after the passage of said act; that, by the 12th section of said act of December 25th, 1852, it was provided "that said Pacific Railroad shall be exempt from taxation until the same shall be completed, opened, and in operation, and shall declare a dividend, when the road-bed, buildings, machinery, engines, cars, and other property of such completed road, at the actual cash-value thereof, shall be subject to taxation at the rate assessed by the State on other real and personal property of like value; and for the purpose of ascertaining the same, it shall be the duty of the president of said company, on the first day of February in each year after said road is completed, opened, and put in operation, and declares a dividend, to furnish to the auditor of the State a statement under his oath, made before and certified by some officer authorized to administer oaths, of the actual value of the road-bed, buildings, machinery, engines, cars, and other property appertaining to such completed road, and from said statements, so furnished, the auditor shall charge said company with the amount appearing to be due to the State, according to the statement furnished, as herein required by the president of said company. * * * * * * Provided, that if said company shall fail, for the period of two years after said road shall be completed and put in operation, to declare a

28 dividend, that the said company shall no longer be exempt from the payment of said tax;" that the said last-mentioned act and the grants therein contained were duly accepted by said company, in the manner therein provided, within six months after the passage thereof, and thereby became, and is, a written contract between the said State and said company, by which it is protected from assessment and taxation of all kinds under the authority of said State, except in the manner and to the extent therein specified.

Your orators further represent to your honors that the said railroad was not completed, opened, and in operation until the 1st day of April, 1866, and did not declare a dividend until after the commencement of this suit; that the president of said Pacific Railroad did, on or before the first day of February in each year, from and after said railroad was so completed, opened, and in operation, furnish to the said auditor of state of the State of Missouri a statement under his oath, made before and certified by an officer authorized to administer oaths, of the actual value of said road-bed, buildings, machinery, engines, cars, and all other property appertaining to such completed road.

Your orators further represent to your honors that the board of assessors of St. Louis County, in the State aforesaid, claiming to act under and by authority of an act of the general assembly of said State, entitled "An act concerning the assessment and collection of revenue," approved March 19th, 1866, in total disregard of the provisions of said act of December 25th, 1852, and of the solem' contract entered into between said State and said company by means of said act and said written acceptance thereof, executed and filed as therein required, and of the rights of your orators thereunder, did, on the 6th day of September, 1869, assess against said Pacific Railroad, upon its capital stock, and make an entry in the assessment-book for said county for the

29 year 1869, the amount and sum of eight hundred and seventy-five thousand seven hundred and fifty dollars, a copy of which is hereto attached, and marked "Exhibit A," and which your orators ask may be made and considered a part of this bill. But your orators say that said last-mentioned act, though intended to justify and warrant the assessment of the capital stock as aforesaid, was and is wholly unconstitutional and void, being an act impairing the obligations of the aforesaid contract between said State and said company exempting said company from all taxation under and by authority of said State, except a tax to be extended by the said State auditor on the property returned as aforesaid by the president of said company, at the rate assessed by the State on other real and personal property of like value; that notwithstanding said assessment was illegal and void as aforesaid, the county clerk did charge the said company, on the tax-book of said county, on said illegal and void assessment, with a tax to the amount in the aggregate of $24,525.00, a copy of which is hereto attached, and marked "Exhibit B," and made a part of this bill; that of said amount $4,378.75 was for State revenue, $3,503.00 for the support of the public schools, $3,503.00 for county revenue, and $13,136.25 for city revenue for the city of St. Louis.

Your orators would further represent that at the time said assessment and levy of said taxes was made, the county of St. Louis was the owner of $1,108,000.00 of the stock of said company, the counties of Moniteau, Pettis, Jackson, and Johnson, through which said road passed, were the owners of $427,000.00, and the city of St. Louis was the owner of $587,000.00 of the same; that the railroad of said company was and is two hundred and eighty-three miles in length, of which

about thirty-six miles lies in the county of St. Louis, and about three miles within the city of St. Louis; that the taxes assessed and
30 levied for said city were upon the same amounts and number of shares of said stock as the said tax for State, school, and county purposes, notwithstanding so small a portion of said road is situated therein, and that the said city was the owner of so large a portion of the capital stock of said company, and that so much thereof was owned by the said counties, whose interest could not be taxed by it.

Your orators further represent that about the fourteenth day of February, 1871, being then non-residents of said State of Missouri, and having no knowledge of the assessment and levy of said tax, and believing that the said company was exempt from all such taxation, they purchased large numbers of the shares of the capital stock of said company, and are now the owners of the same, to wit, three thousand four hundred and fifty shares, of which the said David Bailey owns fifty shares, the said Uriel Crocker eight hundred shares, the said Edwin D. Morgan one thousand shares, the said George B. Curtice six hundred shares, and the said Joseph Seligman one thousand shares; that the greater part of the shares so purchased and owned by your orators were as aforesaid owned by the said city and county of St. Louis at the time said taxes were so assessed and levied, and were afterwards sold by them to parties from whom your orators purchased the same.

Your orators further represent to your honors that the said defendant Constantine McGuire was, on the 15th day of August, A. D. 1871, the collector of the State, county, school, and city taxes in and for the city and county of St. Louis, in said State of Missouri, and as such had in his possession the said tax-books, and a tax-bill, a copy of which is hereto attached and made a part of this bill, marked "Exhibit C," by virtue of which, and under the pretense that said taxes were legally assessed and extended on said property, he did seize and take into his possession the following property, owned by the said Pacific Rail-
31 road, to wit, three hundred thousand feet of lumber; a large lot of bolts, nuts, washers, spikes, and nails, in kegs; ten tons of bar and sheet iron and cast-steel; eight hundred lbs. of assorted brasses, seventy-five locomotive flues; one hundred car-springs; twenty-eight head-lights; one hundred lanterns; fifty boxes of candles; and twenty boxes of furnishing goods, and many other articles known as railroad supplies; that the said Maguire did, on the 16th day of August, in the year last aforesaid, advertise all of said property for sale at public auction, and will, unless restrained by the order of this court, sell the same; that said property is of great value, to wit, of the value of fifty thousand dollars, and was purchased for the special use of said road, and would be difficult to replace in the market, and is indispensable to the efficient operation of said road, and greatly needed for the immediate *repare* of the same, and the cars and machinery pertaining thereto, and for the operation of said road, and that a sale of the same will injure your orators to an extent and of a character that cannot be measured in any action at law; that it consists of innumerable articles that would be, by such sale, so scattered that it will be *imposable* to trace them, and hence they could not be recovered by an action of replevin; that if said property is permitted to be sold in the manner aforesaid it will work an irreparable injury to your orators and other stockholders in said company.

Your orators further represent that the stock of said company subscribed for as aforesaid is owned by over eight hundred persons, the

greater number of whom are non-residents of said State of Missouri, and are inhabitants of various States of this Union and nations of Europe; that it is an article of commerce, and is frequently changing hands and being transferred on the books of said company, and
32 that it would be impracticable to make all of the owners thereof parties to this suit.

Your orator further states that the said Pacific Railroad and its board of directors had and have full knowledge of all the said illegal proceedings, assessments, *estention*, and levy of taxes, seizure of said property, advertisement of the same for sale, and the intention and purpose of said Maguire to sell the same, and *and* of the fact that such sale will deprive the said company of the ability to efficiently operate said railroad and properly transact the carrying business of the company as it is required to do, and will hence work an irreparable injury to your orators and the other stockholders in said company; that one of your orators, to wit, David Bailey, as soon as your orators learned of the levy of said taxes, the seizure of said property, and other illegal proceedings as aforesaid, made application to the said company, said directors, and its officers, requesting and demanding that they should take immediate steps and institute all necessary suits to prevent the sale and waste of said property, and the consequent irreparable damages to your orators and the other stockholders in said company; that said company, its directors, officers, and agents, declined and refused and still refuse to do anything or institute any suit for the purpose of preventing the collection of said tax and the sale and loss of said property, and your orators are informed and believe that the said company, its directors and officers, will either suffer said property to be sold and wasted or will pay said illegal tax from the funds of said company, and that your orators will be and are without remedy at law if the said taxes are so paid or the said property is so sold and wasted.

Your orators, therefore, in behalf of themselves and the other stockholders in said company, who are too numerous to be made parties
33 hereto, pray your honors that, in order to prohibit such irreparable injury to them, and to prevent a multiplicity of suits, to grant them a writ of injunction issuing out of and under the seal of this honorable court restraining and prohibiting the said Constantine Maguire, collector of the taxes aforesaid, his deputies, agents, and servants, from in any way selling or interfering with the said property, or with the use of the same by said company, and from in any way proceeding to collect the said taxes; and that your honors will, by a decree of this honorable court, declare that said tax is illegal and void; that said Pacific Railroad Company and its property is protected by said contract from any and all taxation, except that provided for in said 12th section of said act of December 25th, 1852, and that your honors will grant them such other and further relief as in equity and good conscience they are entitled to; and your orators will ever pray, &c.

JAMES BAKER,
Solicitor for Complts.

[NOTE.—The exhibits referred to in the foregoing amended bill are copied with the original bill in this cause on pages 17 & 18 of this transcript.]

And afterwards, at said September term, A. D. 1873, of said circuit court, the following further proceedings were had in this cause, on Saturday, the 25th day of October, A. D. 1873, to wit:

DAVID BAILEY ET AL., PLAINTIFFS,
vs.
PACIFIC RAILROAD ET AL., DEFENDANTS. } In chancery.

This day comes the defendant Constantine Maguire and files his demurrer to the amended bill herein.

The demurrer filed as aforesaid is in the words & figures following, to wit:

34 *Demurrer to am'd'd bill.*

In the circuit court of the United States for the eastern district of Missouri.

DAVID BAILEY & OTHERS, COMPL'TS,
agst.
THE PACIFIC RAILROAD COMPANY, CONSTANTINE MAGUIRE, & others, defendants.

The demurrer of Constantine Maguire, one of the defendants to the bill of complaint of David Bailey & others:

Now comes Constantine Maguire, one of defendants, and appears to the amended bill of complaint of complainants.

And this defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said amended bill of complainants contained to be true in such manner and form as the same are therein set forth and alleged, does demur to the said bill, and for cause of demurrer shows that the said complainants have not by their said bill made such a case as entitles them in a court of equity to any relief against this defendant, touching the matters contained in such bill or any of such matters. Wherefore this defendant does demur to said bill and to all the matters and things therein contained, and prays the judgment of this honorable court whether he shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with his reasonable costs.

R. E. ROMBAUER,
Solicitor for Defendant Maguire.

Affidavit of merits is hereby waived.
St. Louis, October 24th, 1873.

JAMES BAKER,
Atty. for Complts.

35 Now comes the defendants, the Pacific Railroad, Joseph Brown, Hudson E. Bridge, R. J. Lackland, J. B. Edgar, Nelson C. Chapman, Oliver A. Hart, B. M. Chambers, David Rankin, Benjamin Stickney, E. O. Stanard, Andrew Pierce, jr., & Wm. M. McPherson, by J. N. Litton, their attorney, and join the said Constan. Maguire in his aforesaid demurrer to the complainants' bill for the reasons therein stated.

J. N. LITTON,
Atty. for the above-named defendants.

And afterwards, at said September term, A. D. 1873, of said circuit

court, the following further proceedings were had in this cause, on Thursday, the 30th day of October, A. D. 1873, to wit:

DAVID BAILEY ET AL., PLAINTIFFS,
vs.
PACIFIC RAILROAD ET AL., DEFENDANTS. } In chancery.

This day come the parties, by their respective solicitors, and submit the demurrer to the amended bill to the court, without argument, but on briefs to be furnished to the court hereafter.

And afterwards, at said September term, A. D. 1873, of said circuit court, the following further proceedings were had in this cause, on Wednesday, the 26th day of November, A. D. 1873, to wit:

DAVID BAILEY ET AL., PLAINTIFFS,
vs.
PACIFIC RAILROAD ET AL., DEFENDANTS. } In chancery.

The parties to this cause having failed to furnish to the court the briefs as required by the order hereinbefore made, it is ordered that this cause be now continued until the next term of this court.

36 And afterwards, at the March term, A. D. 1874, of the circuit court of the United States for the eastern district of Missouri, begun and holden at the city of St. Louis, in and for said district, on the third Monday, the 16th day of March, A. D. 1874, the following further proceedings were had in this cause, on Thursday, the 26th day of March, A. D. 1874, to wit:

DAVID BAILEY ET AL., PLAINTIFFS,
vs.
PACIFIC RAILROAD ET AL., DEFENDANTS. } In chancery.

This day come the parties, by their respective solicitors, and submit this cause to the court, upon the stipulation this day filed.

The stipulation filed as aforesaid is in the words and figures following:

Stipulation.

In the circuit court of the U. S. for the eastern district of Missouri.

BAILEY
vs.
PACIFIC R. R. & CON. MAGUIRE. }

The demurrer in the above-entitled cause is submitted by all the parties to said cause.

R. E. ROMBAUER,
Solicitor for Con. Maguire.
J. N. LITTON,
For Pacific Railroad.
JAMES BAKER,
Per J. N. L., *for Bailey.*

P. S.—If demurrer is sustained, let final judgment thereon be entered.
J. N. LITTON.

And afterwards, at said March term, A. D. 1874, of said circuit
37 court, the following further proceedings were had in this cause, on Saturday, the 28th day of March, A. D. 1874, to wit:

Judgment & decree.

DAVID BAILEY ET AL., PLAINTIFFS,
vs.
PACIFIC RAILROAD ET AL., DEFENDANTS. } In chancery.

This cause coming on to be heard at this term, upon the demurrer filed by the defendant Constantine Maguire to plaintiffs' amended bill, in which demurrer the other defendants have joined, and having been submitted: On consideration whereof, and being now fully advised in the premises, the court is of opinion that, so far as said plaintiffs by their said bill seek to restrain the collection of the State, county, and school taxes therein named, the law upon said demurrer is for the defendants, and said demurrer is therefore sustained as to such taxes named in said bill. And the court is further of opinion that, as to the prayer of the bill seeking to restrain the collection of the taxes levied by the city of St. Louis upon all the shares of stock of the defendant, the Pacific Railroad, representing all the capital stock and property of said Pacific Railroad, without regard to the residence of the stockholders, or the situs of the property being within the limits of said city, the law upon said demurrrer is for the plaintiffs, and said demurrer is therefore overruled as to that part of said bill; and said plaintiffs electing to stand upon their said bill as amended, and abide by the decree of the court on said demurrer, it is ordered, adjudged, and decreed that the bill of said plaintiffs herein, so far as the same relates to the collection of the State, county, and school taxes assessed against the defendant, the Pacific Railroad, be, and the same is now hereby, dismissed. It is fur-
38 ther ordered, adjudged, and decreed that the defendant Constantine Maguire, collector of the revenue of the county of St. Louis, Missouri, his deputies, agents, and servants, be, and they are hereby, perpetually enjoined and restrained from selling, or in any way interfering with, the property mentioned in said bill, and belonging to the defendant, the Pacific Railroad, and from interfering with the use of said property by said company, and from in any way proceeding to collect the taxes levied by the city of St. Louis upon all the shares of stock and property of said company representing all the capital stock and property of said company without regard to the residence of the stockholders or the situs of the property being within the limits of said city. It is further ordered, adjudged, and decreed that each party pays their own costs in this suit incurred, and that execution be issued therefor.

And afterwards, at said March term, A. D. 1874, of said circuit court, the following further proceedings were had in this cause, on Wednesday, the 3d day of June, A. D. 1874, to wit:

DAVID BAILEY ET AL., PLAINTIFFS,
vs.
PACIFIC RAILROAD ET AL., DEFENDANTS. } In chancery.

This day come said plaintiffs, by their solicitor, and pray an appeal from the decree rendered in this cause to the Supreme Court of the United States, which is allowed, and said plaintiffs present their bond

of appeal, with sureties duly executed as required by law, which bond is approved by the court, and ordered to be filed and made a part of the record herein.

The bond filed as aforesaid is in the words & figures following, to wit:

39 *Bond.*

Know all men by these presents that we, Daniel R. Garrison, as principal, and T. B. Edgar, as surety, are held and firmly bound unto David Bailey, Joseph Seligman, Edwin D. Morgan, Uriel Crocker, and George S. Curtis in the full and just sum of five hundred dollars, to be paid to the said David Bailey, Joseph Seligman, Edwin D. Morgan, Uriel Crocker, and George S. Curtis, their heirs, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this 3d day of June, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas lately, at the March term A. D. 1874, of the circuit court of the United States for the eastern district of Missouri, in a suit depending in said court between David Bailey, Joseph Seligman, Edwin D. Morgan, Uriel Crocker, and George S. Curtis, plaintiffs, and The Pacific Railroad, Constantine Maguire, Joseph Brown, Hudson E. Bridge, R. J. Lackland, T. B. Edgar, Nelson C. Chapman, Oliver A. Hart, B. M. Chambers, David Rankin, Benjamin Stickney, E. O. Stanard, Andrew Pierce, and William M. McPherson, defendants, a decree was rendered against said plaintiffs, and the said plaintiffs having been allowed an appeal from said decree to the Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said plaintiffs shall prosecute said appeal to effect, and answer all damages and costs if they fail to make good their plea, then the above obligation to be void; else to remain in full force & virtue.

40 DANL. R. GARRISON. [SEAL.]
T. B. EDGAR. [SEAL.]

Sealed and delivered in presence of—

Approved by—

SAMUEL TREAT.

41 UNITED STATES OF AMERICA,
Circuit Court for the Eastern District of Missouri, ss:

I, Austin Drake, clerk of the circuit court of the United States in and for the eastern district of Missouri, do hereby certify the writing hereto annexed to be a transcript of the record and proceedings in case of David Bailey et al. against Pacific Railroad et al., as fully as the same remain on file and of record in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office in the city of St. Louis, in said district, this twenty-seventh day of June, in the year of our Lord eighteen hundred and seventy-four.

[SEAL.] AUSTIN DRAKE, *Clerk*,
By H. C. GEISBERG, *Deputy*.

(Indorsed:) United States circuit court, eastern district of Missouri.

David Bailey et al. against Pacific Railroad et al. Duly-certified transcript of the record & proceedings in the above-entitled cause.

(Indorsement on cover:) No. 474. David Bailey, Joseph Seligman, Edwin D. Morgan, Uriel Crocker, and George S. Curtis, appellants, vs. The Pacific Railroad, Constantine Maguire, Joseph Brown, Hudson E. Bridge, R. J. Lackland, T. B. Edgar, Nelson C. Chapman, Oliver A. Hart, B. M. Chambers, David Rankin, Benjamin Stickney, E. O. Stanard, Andrew Pierce, & Wm. M. McPherson. E. Missouri C. C. U. S. Filed 15th August, 1874.

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In the Supreme Court of the United States.

DAVID BAILY ET AL.

vs.

THE PACIFIC RAILROAD ET AL.

Appeal from the Circuit Court of the United States for the Eastern District of Missouri.

STATEMENT OF THE CASE.

This is a suit to enjoin the collection of taxes assessed against the Pacific Railroad for the year 1869, under the authority of the general revenue laws of the State.

The complainants are stockholders in said company, and are non-residents of said State. The Pacific Railroad is a corporation by that name, created by certain special acts of the legislature of the State of Missouri, referred to in the bill. It and the other defendants are citizens of Missouri. The defendant, Constantine Maguire, was the legal collector of the State, county, school, and city taxes, in and for the city and county of St. Louis, and as such had in his possession a tax bill for taxes assessed against said company upon its capital stock, to the amount of $24,525.00; that of said amount $4,378.75 was for State revenue, $3,503.00 for the support of schools, $3,503.00 county revenue, and $13,136.25 for city revenue. By the authority of the tax bill the defendant, Maguire, had seized and, at the commencement of this suit, was about to sell a large quantity of property known as railroad

supplies, and to prohibit the sale of which this suit was instituted.

The road was completed on the 6th day of April, 1866, and no dividend had been paid prior to the commencement of this suit. On the 1st day of February, 1869, and each year since that time the president of the Pacific Railroad company made returns under his oath of the taxable property of said company in the manner required by a n act of 1852.

Before bringing this suit, the complainants made a written application to, and demand of the board of directors of said railroad company that they institute the proper proceedings to prevent the collection of said taxes, and to protect the franchises and property of said company from loss. They, by a resolution of their board, refused to take any steps in the matter, and declared their intention to pay said taxes, although they admitted the same to be illegal and void.

Complainants filed an amended bill to which defendants demurred. The court below sustained the demurrer as to the State, county, and school taxes, and dismissed the bill as to them, and from that judgment the complainants appealed to this court.

Assignment of Errors.

The following are the errors assigned by the complainants to the ruling and decree of the court below:

1. The court erred in sustaining the demurrer to complainant's amended bill, so far as the State, county, and school taxes therein mentioned are concerned.

2. The said company was and is wholly exempt by law, and by a contract between said State and it, from the payment of said taxes assessed for county and school purposes, and hence the demurrer should have been overruled as to them.

3. The said company could not be legally assessed upon its capital stock for state purposes. The law then and now in force, and which is also a contract between said State of Missouri and said company, requires the assessment of State revenue to be made on the property of the company and not on its capital stock, and in a specific mode therein provided.

4. The court should have overruled the said demurrer as to all parts of the bill and all matters therein alleged, and have enjoined the collection of all of said taxes.

Points and Brief.

The complainants claim:

1st. That the 12th section of an act of the Legislature of Missouri, respecting the taxation of the road in question, was and is a contract between the State of Missouri and said railroad company. That it specifically provides for the whole subject of the taxation of that road, and that the general revenue laws of the State were not intended to, and did not apply to it.

2d. That it exempts said company from taxation for county, school, and all other purposes except those mentioned in it.

3d. That it furnishes the only authority and rule by which that company can be taxed.

4th. That prior to the purchase of the stock in said company now owned by complainants, the highest tribunal in said State had fairly decided the law as claimed above.

The 12th section of the act of 1852, which was accepted at the time and in the manner therein provided, is as follows:

"Section 12. The said Pacific Railroad and the said Southwestern Branch Railroad, shall be exempt from taxation respectively, until the same shall be completed,

opened and in operation, and shall declare a dividend when the road-bed, buildings, machinery, engines, cars, and other property of such completed road, at the actual cash value thereof, shall be subject to taxation at the rate assessed by the State on other real and personal property of like value; and for the purpose of ascertaining the value of the same, it shall be the duty of the president of said company, on the first day of February in each year, after such road is completed, opened and put in operation, and declares a dividend, to furnish to the auditor of the State a statement under his oath, made before and certified by some officer authorized to administer oaths, of the actual value of the road-bed, buildings, machinery, engines, cars and other property appertaining to such completed road; and from said statement so furnished, the auditor shall charge said company with the amount appearing to be due to the State, according to the statement furnished, as herein required, by the president of the company. And in case said company shall fail to pay into the State treasury, within thirty days after the first day of December in each year, the amount charged against said company as aforesaid, said company shall forfeit and pay to the State of Missouri, in addition to the sum with which said company may stand charged by the auditor, ten per cent. per month, after the expiration of said thirty days, on the amount charged to said company; which sum charged against said company, together with ten per cent. per month hereinbefore specified, may be recovered in the name of the State of Missouri, by civil action, in any court of competent jurisdiction; and should the president of said company fail to make out and furnish the auditor of the State a statement as herein required, said company shall forfeit and pay to the State ten thousand dollars for such failure, which may be recovered in the name of the State of Missouri in any court of competent jurisdiction. *Provided*, That if said company shall fail for the period of

two years after said roads respectively shall be completed and put in operation to declare a dividend, that then said company shall no longer be exempt from the payment of said tax, nor from the forfeitures and penalties in this section imposed."

It has been decided by the Supreme Court of the United States, in the case of the Pacific Railroad against Maguire, not yet reported, that this section is a contract between the State and the company, protected by the Federal Constitution, and that the company is exempt from all taxation until a dividend is paid, after the completion of the road, or until two years after such completion. The court says: "we are of the opinion, first, that the 12th section of the act of 1852 *created a contract* between the State and the railroad company, by which the railroad was exempt from taxation, until it was completed and put in operation, and until it should declare a dividend on its capital stock, not, however, extending longer than two years after its completion."

In another case, between the Pacific Railroad and Cass county, the Supreme Court of this State declares, "that the temporary exemption of the company from taxation under that act, it may be conceded, was broad enough to apply to all taxes whatever" 53 Mo., p. 17.

It must be conceded, as settled by these cases, that this section and its acceptance constitute a contract between the State and the company, and that the company was exempt by it from all taxation, until the road was completed and a dividend paid, or until two years after its completion. These events have happened, and the property is now subject to taxation, under the provisions of said act. The only question to be considered under the first point raised, is as to the extent to which it may be taxed, and the manner of taxation.

The language of the act, leaving out such words as do not affect the meaning, so far as this question is concerned,

is, "The Pacific Railroad shall be exempt from taxation until the same shall be completed and in operation, and shall declare a dividend, *when it shall be subject to taxation at the* RATE *assessed by the State on other property of like value.*"

The taxation to which it is to be subject, after the happening of the events mentioned, is to be at a certain *rate*, that is at the rate assessed by the State on other real and personal property of like value. No other or greater rate is authorized, nor is any other taxation than that provided by the act contemplated. It is not a mere declaration, that after the payment of a dividend the property shall be subject to taxation in the manner and at the rate specified. The language employed is materially different. The property is first declared to be exempt from all taxation. This is to continue until the road is completed and declares a dividend, after which it is to be subject to a specified kind and amount of taxation. Does not this sentence taken together preclude the idea of any other or greater taxation? Is it not plain that the exemption is to continue as to all taxations except that particularly specified? It is not said that after these things take place it shall be no longer exempt. There are no negative words used. Were it not for the language which restores it the total exemption would still continue. The limitation of the time of the total exemption, and of the amount of the subsequent taxation are obviously one sentence, and must be taken together. The first clause extending to the first semicolon includes the exemption, the period of its continuance as a total exemption, and the rate at which it may afterwards be taxed. In ascertaining the meaning of this sentence it should not be divided into separate and distinct clauses or subjects, and then claim that the exemption granted is to cease when a dividend is declared, and make a new subject of the remainder of the sentence, which provides what shall take place afterwards. The

whole must be taken together, the latter part as limiting or qualifying the former. The extent and manner of subsequent taxation provided for is as much a limitation of the exempting words as is the completion of the road and the payment of a dividend. The property is first exempt, then to be restored, after certain events happen, to taxation, which is plainly limited in amount. How can it be said that this affirmative language, which declares the property shall be subject to taxation at a certain rate therein fixed, will have the effect of submitting it to further and different taxation?

By examining the whole section it will be seen that the whole subject of the future taxation of this road was intended to be and is specifically provided for; and that the interpretation contended for by us is fully supported by the spirit of the act. The mode of assessing and collecting the tax mentioned is specifically provided with great particularity. A return of the property is to be made. The character of the return, the kinds of property to be returned, the person by whom, and the officer to whom, and the duties of the officer in charging the taxes, and of the officer who is to collect the same, and many other particulars are specifically set out. The tax is to be paid to the State treasurer. No mention is made anywhere in the act of any other taxation for county or any other purpose. In the proviso at the close of the section it is declared, "that if said company shall fail, for the period of two years after said roads respectively shall be completed and put in operation, to declare a dividend, that then said company shall no longer be exempt from the payment of *said tax*, etc. What tax is it that the company is no longer to be exempt from? Clearly the tax specifically provided for after the total exemption ceased. It is not *taxes* but *tax*. The total exemption is from taxes for all purposes, while that authorized is a *tax* only, and is to be paid to the treasurer of State, and that is plainly *the tax* from

which the company is no longer to be exempt. Both the obvious meaning and the well known rule, that the last antecedent should be referred to when the meaning is obscure, clearly indicate that it is the tax provided for. If it was the purpose of the act to leave the property subject to other taxation than that provided for, its authors would have employed language in this proviso that would embrace all taxation. The word "*said*," preceding and limiting the word "*tax*," points to the fact that the tax provided for is the one from which the company is no longer to be exempt.

In an act passed at the same session respecting the Hannibal and St. Joseph Railroad Company, making a grant of a part of the lands granted to the State by the act of Congress, mentioned in the act of December 25th, 1852, a part of which was granted to the Pacific road by it; there is a section similar to this, in which the amount to be paid to the State is called a "*sum of money*" instead of a tax. It has a proviso at its close in which it is stated: "That if said company shall fail for the period of two years after said road shall be completed and put in operation, to declare a dividend, that the said company shall no longer be exempt from the payment of said *sum of money* in this section required to be paid in to the State treasury." It will be seen that the proviso we are considering was evidently copied from that, and is almost a literal copy of it. In the proviso of that act the company was to be no longer exempt from the payment of the *sum of money* required to be paid to the State. Here it means the *tax* required to be paid by the act. It is proper to refer to the section from which this was mainly copied to ascertain the meaning or sense in which the words were used in it. In the case of the Hannibal and St. Joseph Railroad Company *vs.* Shacklet (30 Mo., p. 55), the Supreme Court of Missouri refers to the 12th section of the act of December, 1852, for the purpose of aiding in the construction of

the section from which it was mainly copied in the act concerning that road passed at the same session of the Legislature in September previous. If it is allowable to refer to a subsequent act for such purposes, is it not more so to refer to a prior one, especially when the section under consideration was mainly copied from the one referred to?

In the Shacklet case just referred to, the 12th section of the act of December 25, 1852, is copied in full, and its meaning and object carefully considered, and the opinion of the court in respect to it should be regarded as an adjudication upon it, the same as if it was directly in issue. In that case the court says: "The property of this company had been exempted from taxation, except in a mode and at a time particularly specified in the section which we quoted at large from the act of 1852."

They further say: "The 9th section of the act concerning the Cairo and Fulton Railroad Company, is almost a literal copy of the 12th section above referrred to, and of *course exempts beyond all doubt* all the property of this road from taxation, except in the mode pointed out."

Again, the court says: "This section is not framed with the care manifested in the corresponding provision of the act of the same session concerning the Pacific Railroad Company. There is no express exemption from taxation of the property of the Hannibal and St. Joseph Railroad Company, as there is in the 12th section of the act concerning the Pacific Railroad Company. * * * * At the expiration of two years from the completion of the Hannibal and St. Joseph Railroad, the road-bed, machinery, and all the property of this company employed in the operation of the road, are expressly subject to *a tax* the *amount* of which is to be *regulated* by the general revenue law of the State, and the *mode* of its *assessment* and collection is specifically pointed out." What is here meant by being regulated by the general revenue law is that the rate is to be so ascertained.

The court further says: "Is it at all consistent with any rational probabilities that when the Legislature were framing particular provisions looking to the taxation of this company at a period subsequent to the date of the enactment, they also intended that the same property then prospectively taxed, should be subject to the same taxation, and for the same purposes in the various counties through which the road passed? Does not the whole provision imply, as strongly as words can do, that the property enumerated was not within the general revenue law? If it was, the entire section is a piece of folly, an unmeaning superfluity; unless, indeed, it could be inferred that the object was to tax the same property in two modes—one by the assessors and collectors of the several counties, the other through the agency of the State auditor and the officers of the company. But this hypothesis is just as inconsistent with the tenor and spirit of the enactment as the other. A double taxation on the same property is manifestly not intended either by this enactment or by the provisions of the general revenue law. A double taxation is an absurdity, at least where the proceeds of the tax go in one direction, since it is in effect an increased rate of taxation merely, and could be more plainly and simply expressed by making it so in terms.

The exemption of the stock of the Hannibal and St. Joseph Railroad Company from the State and county taxes, contained in the charter of 1849, must be considered as modified by the acceptance on the part of the company of the act of September 20, 1852, and their coporate property (although representing stock) is subject to taxation at the time and in the manner specifically provided for in the last mentioned act."

The questions here propounded by the court are significant and merit due consideration. It will be seen that the court was of opinion that these sections provided the only mode by which the roads named were to be taxed, and

that their property was not *within the revenue acts*; that it was not intended that their property should be taxed in two modes, one by the State officers and the other by the local authorities.

It may be contended that the question involved in this case was not directly before the court in the Shacklet case. The question there was whether these acts allowed any further or different taxation than that provided for in them; that necessarily included this question, and the court declared that they furnish the only rule and authority by which the companies can be taxed. That decision was for many years after it was rendered regarded as a settlement of this question by all concerned.

In the case of the State *vs.* The Hannibal and St. Joseph Railroad Company (37 Mo., p. 266), which was in respect to taxes imposed by the authorities of Livingston county, for the year 1874, five years after the completion of that road, the court fully sustained the rulings in the Shacklet case, and applied them to taxes imposed after that road was subject to taxation under the provisions of the act of 1852.

On the faith of these decisions, the complainants purchased the stock of said company now owned by them. To overrule them now would be to do them a manifest injustice. The Supreme Court of the United States having decided that the 12th section of the act of December 25, 1852, is a contract between the State and the company, protected by the Constitution of the United States, we are now only to intrepet it as we would an ordinary statute. Happily, this has been done by the Supreme Court of the State in the cases above cited. The constructions so made by it are binding on this court and ought not to be complained of by the authorities of the State.

Gelpeche *vs.* City of Dubuque, 1 Wallace, 175.
Havemeyer *vs.* Iowa County, 3 Wallace, 294.
Olcott *vs.* Supervisors, 16 Wallace, 678.

The case of the city of St. Joseph *vs.* The Hannibal and St. Joseph Railroad Company (30 Mo., p. 176), is a confirmation of our views so far as the meaning of this section is concerned. It is there in effect conceded that the property was not to be taxed under the provisions of the act of 1852 and the laws then in force, to any greater amount or in any other manner than is provided for in that act. The authority to impose the city tax in controversy was placed on the ground that the act of 1852 was not a contract, and therefore might be repealed, and that the act authorizing the city to impose that tax did to that extent repeal it; that in fact there was no consideration given for the grant of the franchise; that the company assumed no new duty, and had given up none of its former rights. The State granted the lands to the company, and it was to give nothing in return. All the duties necessary to a compliance with the trust assumed by the State in accepting the grant of land from the Federal Government, had previously been assumed by the company when it accepted its charter. But in this case the Pacific Railroad undertook the construction of another road than the one provided in its charter, and the lands were granted to it chiefly to aid in the construction of the new road. The fact that the section here involved is a contract has already been settled by the Supreme Court of the United States in the Maguire case previously referred to.

In the case of the Pacific Railroad *vs.* Dulle, 48 Mo., 287, it is assumed that this section is a mere act of legislature that might be repealed at pleasure, and being no contract should be treated as merely making a temporary provision for the collection of a State tax, and that the counties were at liberty to collect taxes under the general revenue laws.

The position taken, that this section was not a contract, has been overruled by the Federal Supreme Court, in the case just referred to, and is not now under consideration

here. The declaration to the effect that the exemption totally ceases after the expiration of two years from the completion of the road, that the taxation therein provided was subject to alteration or repeal, and that counties were at liberty to collect taxes under the general revenue laws, is in contravention of the ruling in the Shacklet and Livingston county cases, and having been made after the plaintiffs in this case acquired their stock, cannot be used as a rule to determine their rights. This case cannot be regarded as a precedent binding the Federal courts, for the reason that it involves a construction of a provision of the Constitution of the United States. When the question whether a contract has been impaired by the State arises in these courts, they are at liberty to construe it for themselves, without regard to former decisions of the State courts, otherwise such courts might deprive the parties of the protection of the Constitution by an improper construction of the contract, without passing on the question of constitutionality. (See the following authorities):

State Bank of Ohio *vs.* Knoop, 16 Howard, 391.
Jefferson Branch Bank *vs.* Skelly, 1 Black, 436.
State Bank of Ohio *vs.* Knoop, 16 Howard, 393.
Butz *vs.* City of Muscatine, 13 Wallace, 575.
Dodge *vs.* Woolsey, 18 Howard, 331.
Carrol *vs.* Carrol, 16 Howard, 275.

The case of the Pacific Railroad *vs.* Cass County, 53 Mo., p. 17, is to the same effect as the last case considered, and we disposed of it in the same way. It will be observ- that in both of these cases the court carefully avoids passing upon the question whether the section under consideration was a contract or not, and whether the Constitution of the United States prohibits its repeal. These cases, however, have been taken up by writ of error, and are now pending in this court

In the Binghamton Bridge case, 3 Wallace, p. 74, the

court says, "all contracts are to be construed to accomplish the intention of the parties; and in determining their different provisions a liberal and fair construction will be given to the words, either singly or in connection with the subject matter. It is not the duty of a court, by legal subtlety, to overthrow a contract, but rather to uphold it and give it effect, and no strained or artificial rule of construction is to be applied to any part of it. If there is no ambiguity. and the meaning of the parties can be clearly ascertained, effect is to be given to the instrument used, whether it is a legislative grant or not."

The act we are now considering is, we think, much freer from ambiguity than those involved in that case.

In the case of the Rolla and Gaston R. R. Co. *vs.* Reid, 13 Wallace, page 269, the Supreme Court of the United States, we think, has fully settled the point in question here. That case was exactly analogous to this. The part of the act under consideration in that case was as follows:

"The said railroad and all engines, cars and machinery, and all the works of said company, together with all profits which shall accrue from the same, and all the property thereof, of every description, shall be exempt from any public charge or tax whatsoever, for the term of fifteen years, and thereafter the legislature may impose a tax not exceeding twenty-five cents per annum, on each share of the capital stock held by individuals, *whenever* the annual profits shall exceed eight per cent."

This court, in construing that act, says, "the only way in which the property of this company could be reached for taxation at all, was after the limitation of the fifteen years had expired. The legislature was then at liberty to tax the individual shares of the stockholders, whenever their annual profits exceeded 8 per cent. When a statute limits a thing to be done in a particular mode, it includes

a negative of any other mode. It was the manifest object of the legislature which incorporated this company to invite the investment of capital in the enterprise of building this road, and no means better adapted for the purpose could have been devised, short of total immunity from taxation. As long as the capital was unproductive it contributed nothing to the support of the government, and even after it became remunerative its contribution was fixed by the terms of the charter, and could not, in any event, exceeed twenty-five cents on the share of stock. The impolicy of this legislation is apparent, but there is no relief to the State, for the rights secured by the contract are protected from invasion by the Constitution of the United States."

The North Carolina act, and the one we are considering, are similar in principle. In that act it is provided that the legislature may impose a tax not to exceed a certain amount, after the event mentioned happens. In this act provision is made with great particularity for assessing a tax not to exceed a certain *rate*, after the event mentioned in it happens. Neither act in direct words negatives the right to impose a greater or different rate of taxation. This act is plainer than that, in that it specifically provides the rate and mode of taxation to which the company is to be subject, and the spirit of the act, as well as the proviso at its conclusion, supports the construction we contend for. See also, Wilmington R. R. Co. *vs.* Reid, 13 Wallace, 264.

In the case of N. Y. and Erie R. R. *vs.* Sabine, the court says, "where, however, instead of surrendering the power (of taxation), the legislature has exercised it by taxing all the property of a particular company in a specified manner, and has intimated no design to subject it to further taxation. We hold the power to be satisfied, and do not add, by judicial implication, burdens which the legislature has not thought fit to impose. If the legislature had meant that the property of this company should be taxable in the

ordinary mode, they would have imposed no special taxation ; or if they meant that this company should be taxable under these acts, in addition to the special impositions, they would have said so. Without some word to lead us to this conclusion, we will not infer that both special and general taxation were intended." 26 Pa., 244.

Our views of the proper interpretation to be given to the section in question, are supported by the rule that "the expression of one person or thing is the exclusion of all others." A certain tax is provided for without mentioning any other. This excludes the idea that any other was contemplated. The mode of imposing and collecting it being specifically set forth, clearly shows that this question was carefully considered, and that if any other taxation had been intended it would have been clearly stated.

The strong and earnest objections made to grants of rights of exemption from taxation by States, based on the theory that the legislature of a State might render the State government powerless to carry on the affairs of the State, by taking away all power to raise funds for that purpose, does not apply here. The State is at liberty to tax the property in question at the same rate, and, consequently, to as great an extent as it does other property. The exemption contended for is from county and other local taxation. The State may appropriate all the tax it is at liberty to impose to its own uses. Counties, cities, and other municipalities, possess no power of taxation, except what is granted to them by the legislature of the State, and it may, if it sees fit, withhold such power to any extent it may choose. They are frequently not permitted to tax all the property the State does. Under the late constitution of that State, all property, except such as is therein excepted, is required to be taxed. The legislature, under its provisions, have provided for the taxation of all property therein required to be taxed for State purposes, but have exempted a portion of it from local taxation.

The literal meaning of the section in question is plain, and it is not allowable to interpret what has no need of interpretation.

The effort in this case seems to be to find some excuse for diregarding the literal meaning of this section. This effort depends for its force on a present public sentiment against this class of legislative grants, which did not exist when this grant was made. To meet this, rather than for the purpose of interpreting the language of the act, we will inquire into the facts and circumstances connected with and existing at the time of its passage.

From a period long prior to the passage of the act in question, down to the institution of this suit the only mode by which railroads could be taxed, except that provided in the act in question, was by taxing the capital stock of the company. (See Revised Statutes of 1845, p. 933, Secs. 22, 23, and 24, and p. 941, Secs. 26 and 27; and Revised Statutes of 1855, p. 1331, Secs. 30, 31, and 32, and p. 1342, Secs. 25 and 26; and Revised Statutes of 1865, p. 163. Secs. 27, 28, and 29, and p. 115, Secs. 28 and 29.) The same provisions, in identically the same language, is contained in each of these provisions, and continued to be the law under which corporations of all kinds were to be taxed, until the 31st day of March, 1871. It will be seen that all corporations in this State were to be assessed and taxed upon their capital stock; that the company was required to furnish a list of such stock to the proper assessor, and to pay over its counter the tax so assessed; that the owner of each share of such stock was to refund to the company the amount of taxes paid for him, and that the company was to have a lien on the stock, to secure its repayment.

The general office and residence of this company has always been in the city of St. Louis; and hence the only county and municipality that could tax it are the county and city of St. Louis.

If the construction claimed by the defence be the true

one, the absurdity would have been committed of providing one mode for assessing and collecting State taxes, and another mode for assessing and collecting all other taxes, as well as the greater absurdity of depriving every other city and county along the entire line of the road, of the power to collect any tax whatever, except the city and county of St. Louis. Can anything be more absurd than to suppose this was intended?

When thr act in question was passed, the Pacific Railroad was, by an amendment to its charter, passed on the 1st day of March, 1851, exempt from the payment of taxes for a period of five years from that date.

The section containing the exemption is as follows:

"SEC. 6. The capital stock, together with all machines, wagons, cars, engines or carriages belonging to the company, together with all their works and other property, and all profits which shall arise from the same, shall be vested in the respective shareholders of the company forever, in proportion to their respective shares, and the same shall be deemed personal estate, and shall be exempt from any public charge or tax whatsoever, for the period of five years from the passage of this act."

By the 14th section of the charter heretofore referred to, the counties, cities and towns along the line of the road, were authorized to subscribe to the capital stock of the company. The act under consideration also authorized any county, city or *incorporated company* to subscribe to its stock, whether situated along the line of the road or not. (See Laws and Documents, page 29, Section 13.)

The legislature being anxious to secure the construction of the road, which was then deemed to be a matter of great importance to the State and to the public—as it in fact was—to induce the counties, cities and incorporated companies and others to invest their capital in the enterprise, among other things granted this exemption from

taxation, and loaned its credit to the company by issuing to it State bonds to the amount of one million dollars. These bonds were to be issued in installments of fifty thousand dollars, after the expenditure of a like sum raised from the stock and other sources. Similar aid was granted, by former and subsequent acts, all upon the condition that like sums were raised upon the stock of the company. Under the stimulation and encouragment given by this legislation, there was subscribed to the capital stock of the company, when the road was completed, about $3,614,500, of which the counties and cities along the line of the road had subscribed for and owned about $2,500,000.

In view of the earnest desire to secure the construction of the road thus manifested by the State and by the municipalities, and the people along its line; and of the fact that the counties and incorporated towns were themselves the principal stockholders, and consequently the proprietors of the road, and hence would have to pay the taxes themselves, who can question that an exemption from local taxation was eminently proper, and was intended? It must be borne in mind, that the only mode of taxing such corporations then provided, was on its stock; and that, while the company was to pay them, the holders of the stock were to refund the amount; and that the company had a lien on the stock to secure its repayment.

The State might well claim and reserve to itself the right to tax the road after its completion, after it was able to pay dividends on its stock, and at the same time grant an immunity from municipal taxation. It had no direct interest in the road, not being a stockholder, and had loaned its money while municipalities were its principal stockholders, and were to be benefited rather than injured by such exemption from taxation by them. To permit taxation by such municipalities would involve the absurdity of their taxing themselves.

It may be conceded, as a rule of law, that when acts making public grants of any kind, are ambiguous or un-

certain, they must be construed against the right claimed.

This rule applies to grants of exemption from taxation like it does to grants of property or other rights or franchises, and with no greater force. Rules of law are not controlled or affected by the magnitude or character of the thing granted. Grants of small value are guarded as sacredly as those of great value.

It is an established doctrine of the Federal Courts, that a State may grant to a corporation an immunity from taxation. This has so often been decided by the highest tribunal of the land, that it will not now be questioned, Although it may be a grant of a sovereign right or power. the same rule of construction must be adopted, when its meaning is questioned, as if it was a grant of the smallest right or privilege. There cannot be any different rule adopted upon principle in the construction of this provision as to taxation, than that applicable to the construction of any other part of the charter of the company.

Again, if the act in question is not a contract, and is subject to repeal, it has in fact not been repealed. It is a special act, providing a mode of assessing and collecting taxes off of this road, while the acts under which the assessments complained of were made, are general and affirmative, and contain no repealing clause referring to the act under consideration, or negative words, and hence do not repeal said act. (See 53 Mo., p. 28; 37 Mo., p. 597, and 41 Mo., p. 453.)

Taxes for State purposes must unquestionably be assessed and collected, as provided in the act of 1852, for the reasons, first, the act is a contract, and cannot be repealed: second, even if it can be, it has not in fact been repealed. Under its provisions, it was the duty of the Auditor of State to charge the taxes appearing to be due the State from the returns made by the president of the company.

JAMES BAKER,
Attorney for Complainant.

Supreme Court of the United States.

OCTOBER TERM, 1874.

BAILEY
vs. No. 474.
PACIFIC RAILROAD.

EXTRACTS FROM LAWS REFERRED TO BY APPELLANT.

Extract from charter of Pacific Railroad Company, December 25, 1852:

"SECTION 12. The said Pacific railroad, and the said Southwestern Branch railroad, shall be exempt from taxation respectively until the same shall be completed, opened, and in operation, and shall declare a dividend when the road-bed, buildings, machinery, engines, cars, and other property of such completed road, at the actual cash value thereof, shall be subject to taxation at the rate assessed by the State on other real and personal property of like value; and, for the purpose of ascertaining the value of the same, it shall be the duty of the president of said company, on the first day of February in each year, after such road is completed, opened, and put in operation, and declares a dividend, to furnish to the auditor of the State a statement under his oath, made before and certified by some officer authorized to administer oaths, of the actual value of the road-bed, buildings, machinery, engines, cars, and other property appertaining to such completed road; and from said statement so furnished the auditor shall charge said company with the amount appearing to be due to the State, according to the statement furnished, as herein required, by the president of the company. And

in case said company shall fail to pay into the State Treasury, within thirty days after the first day of December in each year, the amount charged against said company as aforesaid, said company shall forfeit and pay to the State of Missouri, in addition to the sum with which said company may stand charged by the auditor, ten per cent. per month, after the expiration of said thirty days, on the amount charged to said company; which sum charged against said company, together with ten per cent. per month hereinbefore specified, may be recovered in the name of the State of Missouri, by civil action, in any court of competent jurisdiction; and should the president of said company fail to make out and furnish the auditor of the State a statement as herein required, said company shall forfeit and pay to the State ten thousand dollars for such failure, which may be recovered in the name of the State of Missouri in any court of competent jurisdiction: *Provided*, That if said company shall fail, for the period of two years after said roads respectively shall be completed and put in operation, to declare a dividend, that then said company shall no longer be exempt from the payment of said tax, nor from the forfeitures and penalties in this section imposed."

SESSION LAWS OF MISSOURI, 1866.

CHAPTER I.

Page 125:

SECTION 1. For the support of the government of the State, the payment of public debt, and the advancement of the public interest, taxes shall be levied on the following persons and objects: All male persons over the age of twenty-one and under fifty years, and on all property, real and personal, except as stated in the next section.

EXCEPTIONS TO TAXATION.

SEC. 2. * * * * fourth, lands and other property belonging to any city, county, or other municipal corporation in this State. * * *

Page 126:

SEC. 6. All property, personal by the laws of this State, situate in a county other than the one in which the owner resides, shall be assessed in such last-mentioned county.

SEC. 7. The annual tax levied upon all subjects of taxation, exclusive of taxes for the Union Military Fund, shall be at the following rates: *First*, on all male persons over twenty-one and under fifty years of age, one dollar; *second*, on lands and other property, real and personal, made taxable by law, forty cents on the hundred dollars of the assessed value thereof.

CHAPTER II.

Page 131:

SEC. 10. After having distributed the blanks aforesaid, the assessor shall commence, on the first Monday in September in each year, or on such subsequent day as may have been advertised by him, to receive the lists of taxable property from the tax payers of his county, and he shall attend from day to day at the places and at the times advertised by him, respectively, until he shall have attended all the places designated by the county court for that purpose; and if any assessor shall fail, without reasonable cause, to attend at any place at the time so advertised by him, he shall be liable for double the amount of damages that any tax payer may have suffered on account of such failure; and in all cases where land holders cannot make their own lists, they shall bring the title papers of their land to the assessor, who shall make out such lists for them.

SEC. 11. In the same manner every such person shall deliver to the assessor a just and true list of all property taxable by law, except merchandise, which he owns, or of which he has the charge or management, being in any county in the State.

Page 133:

SEC. 20. Every assessor, as soon as he shall have completed his assessment, shall make out, from the lists de-

livered to him under the eleventh section of this chapter, distinct lists for each county in which any such taxable property may be, and transmit the same, by mail or otherwise, to the assessor of the proper county, who shall assess the same as other taxable property therein, if not before assessed for the same year.

SEC. 23. The assessor shall require every person who owns or has the charge or management of any taxable property, and has failed to deliver such lists, as provided in section ten, to deliver to him the lists thereof (except shares of stock in bank or other incorporated companies) either by personal application or by written notice, to be left at the residence of the party, and every such person shall deliver such list to the assessor within ten days after such application or notice, and shall be assessed ten per cent. additional for such failure.

Page 134:

SEC. 27. Persons owning shares of stock in banks and other incorporated companies, taxable by law, are not required to deliver to the assessor a list thereof; but the president, or other chief officer of such corporation, shall deliver to the assessor a list of all shares of stock held therein, and the names of the persons who hold the same.

SEC. 28. The taxes assessed on shares of stock embraced in such list shall be paid by the corporations respectively, and they may recover from the owners of such shares the amount so paid by them, or deduct the same from the dividends accruing on such shares; and the amount so paid shall be a lien on such shares respectively, and shall be paid before a transfer thereof can be made.

SEC. 29. If the president or other chief officer of any such corporation fail to comply with the provisions of the twenty-seventh section of this chapter, he shall forfeit to the State the sum of one thousand dollars, to be recovered by indictment in any court of competent jurisdiction.

[Sections 27, 28, and 29 above are contained *verbatim* in Revised Statutes of 1845, p. 933, secs. 22, 23, and 24,

and Revised Statutes of 1855, p. 1331, secs. 30, 31, and 32, and Revised Statutes of 1865, p. 103, secs. 27, 28, and 29.]

Page 137:

SEC. 51. As soon as the assessor's book shall be corrected and adjusted, the clerk of the county court shall extend the taxes therein, and shall, within ninety days thereafter, make a fair copy thereof, authenticated by the seal of the court, for the use of the collector; and upon a failure to make out and deliver to the collector such copy in the time specified, the county court shall deduct twenty per centum from the amount of fees which may be due the clerk for making such copy. And such copy of the assessor's book shall be called the "tax book."

Page 138:

SEC. 57. The county of St. Louis shall be assessed by a board of assessors, chosen and appointed as hereinafter provided, and the county court of St. Louis county shall lay off the county in convenient assessment districts, and shall have power to alter and change the same as necessity may require; and such board of assessors shall consist of a president and one assessor for each district.

SEC. 61. It shall be the duty of the district assessors to assess the property within the district for which they were appointed, under the direction and superintendence of the president of the board of assessors, in the manner provided by the general provisions of this law. They shall commence their assessment on the first Monday of September in each year, and complete the same, and make their final return to the president of the board of assessors on or before the first Monday of February in each year.

CHAPTER III.

Page 148:

SEC. 28. The cashier, secretary, or chief clerk of any corporation, the shares of which are taxable by law, at the request of the collector, shall give him a certificate under

his hand, showing the number and amount of shares held in the stock of such corporation, the names of the holders, and the incumbrances thereon; and such collector, in default of the payment by the corporation of the taxes due thereon, as required by the twenty-six [seventh] section of the second chapter of this act, and seize and sell the same in the manner prescribed in the twenty-sixth section of this chapter; and the purchaser thereof shall be admitted to all the rights, powers, and privileges that the holders of such shares had at the time of seizing the same, and shall be entered by such corporation on their books as the owners of such shares.

SEC. 29. If any corporation or any officer thereof shall fail to comply with the provisions of the preceding section, such corporation shall forfeit to the State the sum of one thousand dollars, to be recovered by civil action in the name of the State in any court of competent jurisdiction.

(Secs. 28 and 29 above are contained verbatim in Revised statutes of 1845, p. 941, secs. 26 and 27, and Revised Statutes of 1855, p. 1342, secs. 25 and 26, and Revised Statutes of 1865, p. 115, secs. 28 and 29.)

COUNTY RENENUE.

Page 154.

SEC. 76. The several county courts are empowered to levy such sums as may be annually necessary to defray the expenses of their respective counties by a tax upon all property and licenses made taxable by law for State purposes; but the county tax shall in no case exceed the State tax on the same subject of taxation more than one hundred per centum for the same time, but the county court of St. Louis county is empowered to impose such additional taxes, to pay fines and for other purposes, as may be prescribed by law.

SEC. 77. As soon as may be after the assessor's book of each county shall be corrected and adjusted according to law, the county court shall ascertain the sum necessary to be raised for county purposes, and fix the rates of taxes

on the several subjects of taxation, so as to raise the required sum, and the same to be entered in proper columns in the tax-book.

LAWS OF NORTH CAROLINA, 1852.

Pages 532, 533:

SEC. 8. *Be it further enacted*, That the said railroad, and all engines, cars, and machinery, and all the works of said company, together with all profits which shall accrew [accrue] from the same, and all the property thereof of every description, shall be vested in the said company, one half thereof to the use and benefit of the State, and the other half to the use and benefit of the individual stockholders; and the same shall be deemed and held to be personal estate, and shall be exempt from any public charge or tax whatsoever for the term of fifteen years, and thereafter the legislature may impose a tax not exceeding twenty-five cents per annum on each share of the capital stock held by individuals, whenever the annual profits shall exceed eight per cent.

In the Supreme Court of the United States.

OCTOBER TERM, 1874.

BAILEY *et al.*
vs.
THE PACIFIC R. R. CO. *et al.* } No. 474.

Points submitted by Mr. Edmunds for the Appellants.

I. By the laws of Missouri in force prior to December 25, 1852, a general scheme of taxation of all property in the State existed, which embraced all property of corporations over and above their capital stock, and all shares of individuals, in corporations, as well as the property of citizens, in the counties where situate. (Rev. Stat. Mo. 1845, pp. 927, 931.)

II. In this state of the laws, on the 25th of December, 1852, the Legislature of that State granted the amended act of incorporation of the railroad company, imposing fresh duties and burdens upon it, and making the stipulations contained in section 12 of that act, as set out on page 3 of the record.

III. The provisions of section 12 were substituted for the pre-existing laws upon the same subject, and not additional to them.

IV. No one so far as is known ever contended that the company could be taxed in *both* ways. If not, it was because the twelfth section was exclusive.

V. The act of 1866 (Session Laws Mo., 1866, p. 125 *et seq.*) under which the taxes in question are claimed to have been laid, is merely a revisal of the old law, but drops the enumeration of property contained in it, and charges all property generally, subject to certain exceptions.

VI. Under this last act, and contrary to section 12 of the charter, the authorities of Missouri have for State, school, and county purposes levied the tax in question in this case, by assessments made in the discretion of local officers, upon a parcel of land of the company, and by arbitrary determination, upon 60 per cent. of the "amount of capital stock" as located in Saint Louis County. (Record, pp. 9, 10.)

VII. All the provisions of section 12 are part of the contract under which the road was built and run.

VIII. They cover the whole subject of taxation.

a. A total exemption for a time.

b. "*Then*" a single taxation of the entire property of the company upon a valuation to be had in a stipulated mode, under severe penalties for failure by the officers of the company.

c. The taxation so stipulated for to be measured, year by year, by a definite standard.

d. The sum thus ascertained to be paid directly into the treasury of the State.

e. That standard is "*the rate assessed* BY THE STATE *on other real and personal property of like value.*"

If there be any value in language, there is no room left for interpretation.

Every step taken by the authorities was in opposition to these provisions.

The taxation attempted was—

First. In totally different modes, and reached entirely different results.

Second. It was not in conformity with "the rate assessed by the STATE" alone, but was for *county assessments*, and for local assessments of school boards.

IX. If this be claimed to be rightful taxation independent of the particular arrangement contained in section twelve, it follows that the corporation has, instead of securing an immunity against the changing prejudices of the people of the State and the various cities and counties, engaged to bear all the burdens which may thus be imposed, and also to pay *besides* a sum equal to the whole State taxation, forever!

X. If this be the correct result, reference to the acts of 1871 (Wagner's Statutes, p. 1158 and 1214*b*) will show that this company is now subject to *three* or more distinct taxations upon its property, thus:

1. Under the general provisions of the law providing for taxing *all* property.

2. Under the provisions specially applicable to railroads.

3. Under the twelfth section of the charter already cited.

There is nothing in the act for the taxation of railroads,

(March 10, 1871, Wagner's Statutes, p. 1214*b*,) that in terms relieves this road from the taxation agreed upon in the charter.

There is nothing in the act for the general taxation of *all* property in the State (March 30, 1872, Wagner, p. 1158) that in terms affords either of the two provisions before mentioned.

If, then, it can be held that the charter provisions do not exclude all other methods and subjects of taxation, it must be held that the charter tax is cumulative to the prior law, and that the act of 1866 for taxing all property (under which the present tax is claimed) is rightfully cumulative to both, and that the act for taxing railroads of 1871 is rightfully cumulative to the three prior ones, and that the new tax law of 1872 is rightfully cumulative to the whole four prior enactments!

We think this demonstrates that the only true course is to declare that the clear, fair, and natural import of the language of the charter fixes, exclusively, the rule and measure of taxation for it; as each of the provisions of other laws must be taken for the time being to fix exclusive modes and subjects of taxation.

XI. To hold otherwise would not only shock all notions of justice, but would violate the principle of equality in taxation, secured by the constitution of Missouri, adopted in 1865, after the charter in question was granted, which declares (article 30) "that all property subject to taxation ought to be taxed *in proportion to its value.*" There can in the nature of things be no taxation of property in excess of the rate upon other property, that is not *out of* "proportion to its value."

The amended charter of 1851 (Acts of 1851, p. 268, s. 6) provided that the property of the company should "be

exempt from any public charge or tax whatsoever for the period of five years from the passage of this act."

This was changed by the amended charter of 1852, already referred to, and a different arrangement made for a total exemption limited upon conditions, and for a limited taxation to take effect thereupon. These two acts show that the legislature was acting upon the whole subject, and increasing its grants of immunity in order to get the road.

The case shows the supreme court of Missouri, in the year 1860, settled the construction of this and other similar charters in that State in favor of the appellants' claim; and since that time investments have been made in the State, so that the decision appealed from changes the law as it had been before expounded.

XII. The result is that—

1. The charter scheme is complete and comprehensive, and fixes exclusively the kind, measure, objects, and methods of taxing the company.

2. The provisions thus settled between the State and the company are binding upon both, as a contract which the State has no power to impair.

The Delaware tax case (18 Wall., 206) is clearly distinguishable from this.

1. In that case there was a single and isolated declaration that the "*company should pay annually into the treasury of the State a tax of* ¼ *of* 1 *per cent. on its capital stock of* $400,000;" that is, a fixed sum of $1,000 each year. There was nothing in any part of the charter showing that there was contemplated any *scheme* of taxation.

In this case the charter of 1852, section 12, was a contract (Pacific Railroad *v.* Maguire, No. 280, October

term, 1873, of this court) which on its face covered the whole subject of taxation.

And it stipulated for a total exemption from all taxation until a certain event occurred, "when the road-bed, buildings, machinery, engines, cars, *and other property* of such completed road, at the actual cash value thereof, shall be subject to taxation *at the* RATE *assessed by the* STATE *on other real and personal property of like value; and for the purpose of ascertaining the value of the same, it shall be the duty of the president of said company on the first day of February in each year * * * to furnish to the auditor of the State a statement under his oath * * * of the actual value of * * * and other property appertaining to such completed road; and from said statement, so furnished, the auditor shall charge said company with the amount appearing to be due the State*," &c. * * * "*Provided*, That if said company shall fail for the period of two years * * * to declare a dividend, that then said company shall no longer be exempt from the payment of *said tax*, nor from the forfeiture," &c., * * * *

Here, then, is one connected proposition for total exemption from taxation for a defined period, and under defined terms, and then a specific provision for a *total taxation* of *all the property* of the company on one single valuation, made in a particular way, at the "RATE ASSESSED BY THE STATE *on other real and personal property of like value.*

If this section is not to be criticised like a plea in abatement, and defeated unless "certain to a certain intent in every particular," it seems impossible to doubt that these provisions for one single and clearly defined rate and mode of taxation were an essential part of the consideration upon which stockholders and creditors of

various States advanced their money to aid the development of Missouri, as a security against local passions and prejudices liable to arise after the investments had been made; and that the arrangement was intended to bind the State as well as the company.

Raleigh and Gaston Railroad *v.* Reid, (13 Wall., 269,) is precisely in point.

See also on the point that affirmative words negative other modes, &c.—

Marbury *v.* Madison, (1 Cr., 174;) grant of original jurisdiction in certain cases excludes others.

Durousseau *v.* The United States, (6 Cr., 307;) affirmative description of appellate power negatives that not comprehended in it.

Smith's Commentaries, §§ 502, 508.

Gregory *v.* Des Anges, Bingham, N. C., 85.

Cates *v.* Knight, 3 Term Reports, 442.

Rex *v.* Nibley, 5 Term Reports, 21:

"There is no magic in words; and if the words used be sufficient to convey the ideas of the parties, the court must decide upon them. And though the word *only* is not used here, the fair import of the words here used conveys the same idea."

And the proviso of section 12 of the charter distinctly shows that the exemption and the tax named are correlatively co-extensive. The exemption from taxation in the first clause of the section—which is total—is repeated in the proviso as applied to the "said tax" provided for. The measure of exemption and of taxation, when taxation should occur, is literally, as well as in spirit, the same.

GEO. F. EDMUNDS,
Of Counsel.

Supreme Court of the United States.

No. 474.

DAVID BAILEY, JOSEPH SELIGMAN, EDWIN D. MORGAN, URIEL CROCKER, AND GEORGE S. CURTIS, *Appellants*,

vs.

THE PACIFIC RAILROAD, CONSTANTINE MAGUIRE AND OTHERS, THE DIRECTORS OF SAID COMPANY, THE PACIFIC RAILROAD, *Respondents*.

BRIEF FOR RESPONDENTS.

This cause comes up from the Circuit Court of the United States for the Eastern District of Missouri, and raises the question of the proper construction of Section 12 of an act of the General Assembly of the State of Missouri, approved December 25, 1852, entitled "An Act to accept a grant of land made to the State of Missouri to aid in the construction of certain railroads in this State and to apply a portion thereof to the Pacific Railroad," which said 12th section is as follows:

[The section is fully set forth in the brief of Judge Baker, solicitor for plaintiffs.]

The provisions of this act were duly accepted by the railroad company.

The plaintiffs, in and by their bill, claim that thereby said act became a contract between the said State and said com-

pany, by which it is protected from assessment and taxation of all kinds under the authority of said State, except in the manner and to the extent in said twelfth section specified.

Acting under the authority of an act concerning the assessment and collection of revenue, approved March 18th, 1866, the county authorities assessed a tax according to the provisions of said act, against the said railroad company for the year 1869, and was about to proceed to collect the same when the complainants filed this their bill, praying an injunction to restrain the defendant Maguire, collector of State and county revenue, from enforcing the collection of said tax bill, and a decree that the said tax so levied was illegal and void, and that the said company was exempt from all taxation, except that provided for in said 12th section of said act of December 25th, 1852.

To the bill a demurrer was interposed and sustained, and a decree so far as said plaintiffs seek to restrain the collection of the State, county and school taxes therein named, the law was for the defendant, and so far as said bill related to the collection of the State, county and school taxes assessed against the defendant, the Pacific Railroad, the bill was dismissed.

From this decree the plaintiffs have appealed to this court.

Plaintiffs' contention is that by the 12th section of the act of December 25, 1852, not only is the company exempt from taxation until the road was completed, opened and in operation, and should declare a dividend, or for the period of two years after the same should be completed and put in operation, if it should before that time fail to declare a dividend, but also that the company is exempt from any *other* taxation than as contemplated in said section, and from any other *mode* of taxation than as therein prescribed.

Defendants' contention is, that after the time limited, the property of the railroad company became subject to taxation as any other property in the State, to State, county, munici-

pal and school taxation, and through any mode which the General Assembly of the State might see fit to prescribe, and that the provisions of the 12th section of the act of 1852 constituted no contract in favor of the company as against the right of the State to (after the time had elapsed during when the company was to be exempt from taxation) provide by law for the taxation of the property of the company in any manner it should see fit, and for the general purposes for which any other property in the State was subjected to taxation.

The history of the legislation of the State of Missouri in regard to the exemption of the property of the company from taxation, may be found stated in the opinion of the court delivered by Ewing, J., in the case of Pacific Railroad *vs.* Cass county *et al.*, 53 Mo., p. 25, in which case the court held that as to the claims of the company to exemption from county or other taxation under this alleged contract, it is wholly impermissible.

The charter of the Pacific Railroad Company, granted March 12, 1849, contains no provision exempting its property from taxation.

Sess. Acts 1849, p. 219.

By an act amendatory of the charter approved March, 1851, Sess. Acts, 1851, p. 271, it is provided that the capital stock, together with all machines, wagons, cars, engines and carriages belonging to the company, together with all their works and other property, and all profits which shall arise from the same shall be vested in the respective shareholders of the company forever, in proportion to their respective shares, and the same shall be deemed personal estate and shall be exempt from ALL PUBLIC CHARGE OR TAX WHATSOEVER for the period of five years from the passage of the act. This exemption would have expired in March, 1856, long after the passage of the act of 1852. I am willing to concede that this language, "all public charge or tax

whatsoever," was sufficient to include county and all other taxes, as well as those of the State, but the act of 1852, I insist, using the language "the said Pacific road shall be exempt from taxation," ought not to be held to extend further than taxation for State purposes.

A provision that the property of a corporation shall be exempt from State and county taxation does not exempt it from taxation by a city.

Lexington *vs.* Aull, 30 Mo., 480.

Paris *vs.* Farmers' Bank, *Id.*, 575.

St. Joseph *vs.* Hannibal and St. Joe R. R., 39 Mo., 476.

State *vs.* Dulle, 48 Mo., 282.

POINTS.

The main question involved in the case is the exemption or non exemption of the property of the railroad company from taxation other than by the State for State purposes, that is to say exemption from county, city, school or other purposes, for the company claims perpetual exemption from all county, city, school, municipal and other taxation under the provisions of the said 12th section of the act of 25th December 1852.

This claim is one of forced construction, requiring argument to force the mind to the conclusions sought for, whereas a law which intends to take away the general power of taxation, which designs to relieve property from its proportion of the general burthens of government, should be so clear, explicit and determinate that there can be neither doubt nor controversy about its terms.

I. The Pacific Railroad was at no time exempt from taxation for county and other municipal purposes; after March 1856, or after its acceptance of the provisions of the Act of 1852.

II. If so exempt, however, that exemption continued only for the time mentioned in the 12th section of the Act of 1852, which had expired before the assessment mentioned in the pleadings.

III. The mode of taxation prescribed by the 12th section of the Act of 1852, did not form or constitute a contract between the State and the company, so that no other mode or manner of taxing the property or bringing it within the operation of the revenue laws of the State could be pursued or adopted.

IV. The questions herein have been adjudged by the Supreme Court of Missouri in the cases—

Pacific Railroad *vs.* Cass Co., 53 Mo., p. 17.

Pacific Railroad *vs.* Dulle, 48 Mo., p. 287.

Hannibal and St. Joe Railroad *vs.* Schacklet, 30 Mo., p. 55.

It is apprehended that the learned counsel for the plaintiffs has entirely mistaken the decision of the Supreme Court of Missouri in the case of The State *vs.* Hannibal and St. Joe Railroad, 37 Mo., 265. The syllabus correctly states the decision of the court: "The lands granted by the State to the Hannibal and St. Joe Railroad company by the Act of September 20, 1852, are not taxable for State and county purposes under the general revenue law. The property of the company is represented by its shares of stock, and there cannot be any property over and above the stock held by the stockholders." The plaintiff's argument must be not only that the company is exempt from all taxation except that made by the State, but that the only mode of ascertaining the amount of the tax is in the way prescribed in the 12th section. It shall be the duty of the president of said company on the first day of February in each year, to furnish to the Auditor of State a statement under his oath, made before and certified by some officer authorized to administer oaths, of the actual value of the roadbed, buildings, machinery, etc.

If the General Assembly should see fit in its wisdom to change the period of the year when this statement is to be made or the officer by whom to be made; it is argued that this would be a violation of the contract, and no basis for the amount of the taxable property could ever be had other than by the oath of the president of the company in the manner prescribed in the Act.

The governing idea of the company is to escape all taxation for county and municipal purposes, for I suppose if it

is to be taxed for these purposes it makes no difference how the tax is assessed, whether under the provisions of the Act of 1852 or of the Act of 1866, under which the tax in question was assessed, or of any other Act.

The proper and sensible construction of this 14th section of the act of 1852, we take to be that by its acceptance of the provisions of the act the Company surrendered its exemption from all public charge or tax whatsoever, which existed under the act of 1st March, 1851, and continued for five years therefrom, or until 1st March, 1856, and its property came, so far as taxation was concerned, under the provisions of the act of 1852.

That by the provisions of the last mentioned act, the said road and the Southwestern branch thereof, became exempt from taxation until the same should be completed, opened and in operation, and should declare a dividend when the same should be subject to taxation, how subject to taxation ? answer, at the rate assessed by the State on other real and personal property.

This is simply the rate of taxation, and for the purpose of ascertaining the value of the road, a mode is pointed out, which mode we insist did not form the subject of a contract; for convenience sake that mode was fixed upon, but which was liable to be changed for any other mode of getting at the same result, viz: the value of the roadbed, buildings, machinery, engines, cars and other property of the completed road.

To say that the provision that the road should after a certain period, be subject to taxation at the rate assessed by the State on other real and personal property of like value, should be held an exemption from any other than taxation for State purposes, it strikes us as forced, artificial, constrained, and in the highest degree unreasonable, construction.

H. A. CLOVER,

For Constantine Maguire, late Coll'r. of St. Louis Co.

IN THE
Supreme Court of the United States,

DAVID BAILEY, JOSEPH SELIGMAN, EDWIN D. MORGAN, URIEL CROCKER AND GEORGE S. CURTIS, *Appellants.*
versus
THE PACIFIC RAILROAD COMPANY, CONSTANTINE MAGUIRE, JOSEPH BROWN, MAYOR OF ST. LOUIS, AND OTHERS, *Appellees.*

OCTOBER TERM, 1874. No. 474.

THE PACIFIC RAILROAD COMP'Y, *Plaintiff in Error,*
versus
DULLE, COLLECTOR OF COLE COUNTY, *Defendant in Error.*

THE PACIFIC RAILROAD COMP'Y, *Plaintiff in Error,*
versus
CASS COUNTY, *Defendant in Error.*

Appeal from the Circuit Court of the United States for the Eastern District of Missouri.

BRIEF BY BRITTON A. HILL,

Of Counsel for the State of Missouri interested in the Question for the Appellees, the City and County of St. Louis, represented by the County Collector of St. Louis County and the Mayor of St. Louis, and for the Defendants in Error in the other two cases of Cass County and Cole County, which are to abide the ent of the first case.

STATEMENT OF CASE.

The appellees filed their bill in equity in the Circuit Court of the United States for the Eastern District of Missouri, on the 2d day of October, 1871, to enjoin the sale of certain personal property belonging to the Pacific Railroad Company, that had been, and was at that time, levied upon by Maguire, the Collector of St. Louis County, for taxes of the State of Missouri, and county and city of St. Louis, assessed in 1869 for that year, by the Assessor of St. Louis City and county of St. Louis, under the assessment laws of the said State; claiming that the twelfth section of the act of December 25, 1852, exempted the said railroad and its property from assessment for State, county, and city taxes, in any other mode than that provided in said twelfth section of said act.

It was averred, also, that the county of St. Louis was a stockholder in said railroad to the amount of $1,108,000; that the counties of Moniteau, Pettus, Jackson, and Johnson, through which said railroad passed, owned $427,000 of stock, and that St. Louis City was the owner of $587,000 of stock in said railroad; that the State had made a contract by said twelfth section of said act, not to tax or assess said railroad or its property, except upon the amount of valuation made by the president of said railroad and filed in the office of the State Auditor.

To this bill the appellees filed a demurrer, and the court below sustained the demurrer as to the State, county, and school taxes, and dismissed the bill. As to the taxes assessed for the city taxes of the city of St. Louis, the court below entered a decree for a perpetual injunction.

From this decree the complainants took an appeal to this honorable Court.

The appellants claim exemption from taxes under section 12 of Act December 25, 1852, which is as follows: "The said Pacific Railroad and the said Southwestern Branch Railroad

shall be exempt from taxation respectively until the same shall be completed, opened, and in operation, and shall declare a dividend, when the road-bed, buildings, machinery, engines, cars, and other property of such completed road, at the actual cash value thereof, shall be subject to taxation at the rate assessed by the State on other real and personal property of like value; and for the purpose of ascertaining the value of the same, it shall be the duty of the President of said Company, on the first day of February in each year, after such road is completed, opened, and put in operation, and declares a dividend, to furnish to the Auditor of the State a statement under his oath, made before and certified by some officer authorized to administer oaths, of the actual value of the road-bed, buildings, machinery, engines, cars, and other property appertaining to such completed road; and from said statement so furnished, the Auditor shall charge said Company with the amount appearing to be due to the State, according to the statement furnished, as herein required, by the President of the Company. And in case said Company shall fail to pay into the State Treasury, within thirty days after the first day of December in each year, the amount charged against said company as aforesaid, said company shall forfeit and pay to the State of Missouri, in addition to the sum with which said company may stand charged by the Auditor, ten per cent. per month, after the expiration of said thirty days, on the amount charged to said company; which sum charged against said company, together with the ten per cent. per month hereinbefore specified, may be recovered in the name of the State of Missouri, by civil action, in any court of competent jurisdiction; and should the President of said company fail to make out and furnish to the Auditor of the State a statement as herein required, said company shall forfeit and pay to the State ten thousand dollars for such failure, which may be recovered in the name of the State of Missouri, in any court of competent jurisdiction: *Provided*, that if said company shall fail for the period of two years after said roads respectively shall be completed and put in operation to declare a dividend, that then said company shall no longer be exempt from the payment of said tax, nor from the forfeitures and penalties in this section imposed."

The Pacific Railroad was completed, opened, and in operation on the 7th of April, 1666, and the tax in question was assessed in the year 1869, after the expiration of two years from the completion of the road, as stated in the proviso to said 12th section.

BRIEF.

I. Two questions arise in this case under the § 12, of act of 1852.

1st. Does the said section create a contract between the State and the Pacific Railroad Company, exempting the railroad property from all other taxation than State taxes and from assessment by county assessors?

2d. Does the mode of valuation of the railroad property under said section, preclude the State from providing other modes of valuation or assessment under general laws?

II. The remaining questions are, whether the real estate of said railroad was subject to assessment under the general laws of the State, and was properly assessed under the laws existing in 1869, and whether the Collector had power to levy for the taxes so assessed for county purposes.

III. After two years from the completion of the railroad, the said twelfth section declares, "it shall be subject to taxation at the actual cash value thereof, at the rate assessed by the State on other real and personal property of like value;" "and for the purpose of ascertaining the value of the same, it shall be the duty of the president of the company," on the 1st of February of each year after completion of the railroad, to furnish the Auditor of the State, under oath, a statement of the actual value of the road-bed, buildings, and other property of such completed road, from which statement the Auditor shall charge said company with the amount appearing to be due to the State, according to the statement furnished.

From this provision of § 12, the plaintiff in error desires this court to hold there is a contract prohibiting any other valuation

or assessment of the railroad property and the levying of any other taxes than State taxes.

The words "at the rate assessed by the State on other real and personal property of like value," mean "at the rate assessed" under the laws of the State. No assessment is ever made by the State. All assessments "on other real and personal property of like value," are made under the general laws of the State, by the proper officers, and cannot be made otherwise.

This is a case wherein the Pacific Railroad Company of the State of Missouri, seeks to exempt their property from taxation, and to prevent the collection of the taxes assessed and levied upon them by the State. It involves, therefore, the question of the inhibitory power of the Federal courts over the highest power of State government; for if the right of taxation is not absolute in the legislative department of the State within the constitutional limitations, and if the judicial departments of the State and Federal governments may exercise the power to enjoin the collection of State and county taxes, as fixed by the Assessing Boards of a State, then all the resources of States may be held in abeyance by judicial interference, and there would virtually be an end to State government. It is quite as important for the legislative body of a government to retain the absolute power of taxation under the constitution, as to be sovereign in the matter of appropriations, which has at all times been so jealously insisted upon. For if either power can be overthrown by the judicial department, the legislative body, which represents the people in their sovereignty, is deprived of the power to execute the will of the people.

Should at any time injustice be done to an individual or to a corporation by the Legislature, in its exercise of that sovereign power of taxation, the remedy lies not in a court of equity, but in a direct appeal to the Legislature itself. The duty of courts is to afford protection and assistance in the collection of lawful taxes; but on no account to exercise authority to hinder or delay such collection, unless, indeed, there is a clear violation of a specific contract within the purview of the Federal Constitution. No Federal or State court should assume to constitute itself a

new Board of Assessors, under the pretext of equity, and thus to overrule and annul the acts of the legally constituted Boards of the State. It is only in cases where the Legislature, having power to bind the State, has entered into a special contract with individuals or corporations, not inhibited by the Constitution, that the judiciary may be called upon to interfere. It will appear, however, that in the present case there is no such contract.

The present case is governed, in the main, by the following general propositions:

I.

Exemption from taxation is never to be presumed. Hence a law, which attempts to deprive the Legislature of the power of taxation, must be so clear and explicit that no doubt or controversy in regard to its terms or the consideration, which render it binding, can arise.

II.

It is only when the tax is wholly *illegal* or when the assessment has been made *fraudulently* by the authorized Board of Assessors, that courts of equity have jurisdiction to enjoin its collection.

III.

The remedy for illegal taxation, under a general power to tax, is an appeal to the proper appellate tribunal. If no appeal is given, the courts cannot reverse the judgment of the tax officers. (1871.) Stewart vs. Maple, 70 Penn. St., 221.

The assessment of taxes in Missouri is a judical act. *St. Louis Mutual Life Ins. Co.* vs. *Charles*, 47 Mo., 462 (1871). *North Mo. R.R. Co.* vs. *Magwire*, 49 Mo., 482 (1872). *Certiorari* is the remedy in such cases. Saline Co. case, 45 Mo., 52; Phelps Co. case, 46 Mo., 68.

IV.

The Legislature has power to repeal a temporary rate of taxation, and to impose another and higher rate of or additional taxation, unless there has been some express contract in limitation

of the power, upon a consideration deemed to be a part of the value of the charter of the corporation.

Delaware Railroad tax, *id.*

(1867). St. Joseph vs. Hannibal & St. Joe R. R. Co., 39 Mo. 476.

(1871). State, to use of Pac. R.R. Co., vs. Dulle., 48 Mo. 282.

(1869). North Mo. R.R. Co. vs. Magwire, 49 Mo., 502.

Glasgow vs. Rowse, 43 Mo., 479.

St. Louis vs. Manufacturers' Sav's B'k, 49 Mo., 574.

But in the present case no such limitation of taxing power can be shown, nor any special mode of assessment *exempting* the Pacific Railroad Company from assessment under the general assessment laws of the State, requiring all property to be assessed in proportion to its value.

V.

The power to tax rests upon necessity, and is inherent in every sovereignty; and in reference to taxation, therefore, the Constitution is not a grant of that power, though it may be a restriction or limitation of it.

(1869). Glasgow vs. Rowse, 43 Mo., 479.

VI.

The Legislature has full power and control over the subject of taxation, and this power can never be surrendered, so far as corporations are concerned, unless it is done expressly or by necessary implication in the charter itself.

(1872). St. Louis vs. Man. Sav. B'k, 49 Mo., 574.

VII.

There is no remedy in courts of law or equity against unjust legislation. Legislatures are responsible only to the people—unless, indeed, the acts of the Legislature are directly violative of the provisions of the State or the Federal Constitution. The right to determine what proportion of the burdens of taxation should be borne by any individual or by any class of individuals

must be determined by the Legislature. In the absence of constitutional restrictions, the courts cannot determine the question. North Mo. R.R. Co. vs. Magwire, 49 Mo., 490.

VIII.

If there is a contract to exempt from taxation, such a contract must be express in limitation of the powers of the Legislature, and must be couched in unmistakable terms, and upon a consideration deemed to be a part of the value of the grant or of the charter.

Trask vs. Magwire, 18 Wall., 401; Prov. B'k vs. Billings, 4 Pet., 562; Gordon vs. Appeal Tax Court, 3 How., 133; Pacific R.R. Co. vs. Magwire, 19 How.; Christ Church vs. Philad., 24 How., 300; Philad. & Wilmington R.R. Co. vs. Maryland, 10 How., 376; Jefferson Branch B'k vs. Kelley & Clark, 447; Ohio Life Ins. & Trust Co. vs. De Bolt, 16 How., 416; Washington Univ. vs. Rowse, 42 Mo., 325; St. Joe & Hann. R.R. Co., 39 Mo., 476; Lionberger vs. Rowse, 43 Mo., 67; City of St. Louis vs. Boatmen's Ins. & Trust Co., 47 Mo., 150; Pacific R.R. Co. vs. Dulle *et al.*, 48 Mo., 282; Pacific R.R. Co. vs. Magwire, 51 Mo., 142; Pacific R.R. Co. vs. Cass Co., 53 Mo., 17.

IX.

What is the contract in this case?

By section 12 (Sess. Acts of 1852–3, p. 13), the road-bed, buildings, machinery, engines, cars, and other property of the railroad, "shall be exempt from taxation respectively *until* the same shall be completed, opened, and in operation, and shall declare a dividend, when the road-bed, buildings, machinery, engines, cars, and other property of such completod road, *at the actual cash value thereof*, shall be subject to taxation at the rate assessed by the State on other real and personal property of like value: * * * * *Provided*, that if said company shall fail for the period of *two years* after said roads respectively shall be completed and put in operation to declare a dividend, that then said company shall no longer be exempt from the payment of said tax, nor from the forfeitures or penalties in this section imposed."

This exemption from taxation only existed during the period of the construction of the road and for two years after its completion. The road was completed on the 7th of April, 1866, so that it became taxable on and after the 7th of April, 1868.

Under the 12th section of the act of 1852, "the President of the Pacific Railroad Company is to furnish a sworn statement of the actual value of the road-bed, buildings, machinery, engines, cars, and other property appertaining to such completed road," and thereupon the Auditor shall charge said company with the amount appearing to be due to the State, according to said statement.

The period has expired during which the said railroads were exempt from taxation under the said 12th section of said act of 25th December, 1852, so that the Pacific Railroad Company was subject to taxation since the 7th day of April, 1868.

X

The question is, whether the Pacific Railroad and its appurtenances are subject to assessment and the determination of their *actual* value by the State and County Assessors in this case, when the President of the company makes a return of one-third of the value of the railroad and its appurtenances, real estate, etc., instead of the actual value, as required by said 12th section.

In other words: is the sworn return of the President concerning the value of a railroad binding upon the Assessors of the County and upon the Board of Equalization, and has the Legislature no power to provide for a revision of his assessment?

This alleged contract in the 12th section does not prohibit the General Assembly from passing laws for the just valuation of railroad property, and the just equalization of the assessment thereof.

The contract is made so as to exempt the railroads from taxation for a certain period after their completion, and this contract declares that after two years have expired from their completion, "they shall be subject to taxation at the actual cash value "thereof, at the rate assessed by the State on other real and "personal property of like value."

The method provided in that section for the ascertainment of the actual cash value, from the sworn statement of the president of the railroad, was the only one that could be adopted, until the General Assembly provided a mode for the revision of his statement.

The case of *Hannibal & St. Joseph Railroad* vs. *Shacklett*, 30 Mo. 550—A. D. 1860, was decided when no other mode of assessment existed.

But the mode of assessing and collecting the taxes upon this railroad was not a part of the contract, in any sense, as claimed by the complainants in this case. The contract exempting the roads from taxation until two years after their completion, is a definite one, founded upon a pretended consideration, but the mode provided for the assessment of the value of the railroad for taxation at the rate assessed by the State on other property, is a matter wholly applicable to the revenue laws of the State, and comes within the prohibition of the general corporation law of Missouri in force in 1845, which thus ordained.

Sec. 1, Rev. Code 1845, p. 231, ordains as follows:

"Every corporation as such has power: *First*, To have succession by its corporate name for the period limited in its charter, and when no period is limited, for twenty years. *Second*, To sue and be sued, complain and defend, in any court of law or equity. *Third*, To make and use a common seal and alter the same at pleasure. *Fourth*, To hold, purchase and convey such real and personal estate as the purposes of the corporation shall require, not exceeding the amount limited in its charter. *Fifth*, To appoint such subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation. *Sixth*, To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock."

Sec. 2. "The powers enumerated in the preceding section shall vest in every corporation that shall hereafter be created, although they may not be specified in its charter, or in the act under which it shall be incorporated."

Sec. 3. "In addition to the powers enumerated in the first section of this article, and to those expressly given in its charter, or in the act under which it is, or shall be, incorporated, no co - poration shall possess or exercise any corporate powers, except such as shall be necessary to the exercise of the powers so enumerated and given."

Sec. 7. "The charter of every corporation that shall hereafter be granted by the Legislature shall be subject to alteration, suspension and repeal, at the discretion of the Legislature." Sec. 7, Chap. 34, Rev. Code, 1845, p. 232

The complainants insist, that the President of the railroads under the 12th section of the act of 1852, had the sole power to fix the actual cash value of the property in these railroads, and that the State was bound by this assessment of the President of the railroad company, and that the Legislature had no power to provide by law for the correction of this appraisement. But no such power is conferred by the acts of the Legislature upon this company or its President.

The charter of the Pacific Railroad Company of 1849, Acts, p. 219, recites in the 1st section the powers contained in the 1st section of the Code of 1845, and declares in the 7th section of the act of 1849 that tho company shall have power to survey, mark, locate and construct a railroad from the city of St. Louis, etc., and hold right of way, etc.

Sec. 20. "The operations of said company shall be *confined* to the general business of locating, constructing, managing, and using said railroad and the acts necessary or proper to carry the same into complete and successful operation."

The 4th section of act of 1851, page 268, declares that none of the sections of the 1st article of said act concerning corporations, shall apply to the Pacific Railroad Company, except sections 4, 5, 6, 17 and 23 of the said act.

This leaves the restriction created by section 20 of act of incorporation of 1849, in full force. No additional powers are given to the company than those necessary for laying out and building a railroad and branches, depots, etc.

The act of 22d February, 1851, p. 269, gives no additional powers to the railroad company.

The act of 25th December, 1852, grants the Pacific Railroad Company about 1,189,000 acres of land donated by Congress on 10th June, 1852, to the State to aid in the construction of certain railroads; and the right to lay out the South Branch Railroad, with the same powers before enumerated, and the power to locate and select the lands granted; to sell them to build the road and issue bonds for sale, and to borrow bonds of the State to aid in the building of said railroad and branch road.

It will be seen from the foregoing acts that the powers of the company are strictly *confined* to those named in the 20th section of act of 1849 and those enumerated in the act of 1852, and those last above specified.

The 12th section of the act of 1852 ought not to be construed so as to give the president of the railroad company the *power* to fix the assessment of the actual cash value of the railroad and its appurtenances, at any other amount than the real value in cash. Nor can it be made to appear that the Legislature intended to grant to the company the power of making its own assessment by the President of such company so that no further legislation could provide for a revision of any error, mistake or fraud of that officer, in the ascertainment of the actual cash value of the railroad and its appurtenances.

Yet this is the construction claimed by the complainants. It cannot be correct, for it is in direct conflict with the 20th Sec. of the Act of 1849, which limits the powers of the company to building, equipping, managing, and using a railroad.

Moreover, this value stated by the president, is to be the actual cash value and *subject to taxation at the rate* assessed by the State on other real and personal property of *like value*. It is made "the *duty* of the president of said company on the 1st day of February, in each year * * * to furnish to the Auditor of the State a statement under oath * * * of the actual value of the road-bed, buildings, machinery, engines, cars, and other property appertaining to such completed road, and from said statement so furnished, the Auditor shall charge said company with the amount appearing to be due to the State

according to the statement furnished as herein required, by the president of the company."

But if the president fails to perform this *duty* fairly and justly as required by the act, the Legislature is authorized to appoint other officers to do the *duty* justly and fairly. The Legislature has proceeded to pass laws since the adoption of the new Constitution in 1865, to secure the just performance of the *duty* of ascertaining the actual cash value of the railroad property, so that if the president of the company fails to perform his *duty* under the 12th Section of the Act of 1852, by truly stating the actual cash value, the County Courts shall ascertain and fix it and add any property omitted, and the Board of Equalization shall finally pass upon it, so as "to subject (the property) to taxation at the *rate assessed* by the State on *other* real and personal property of *like value*;" as stated in said 12th Section.

To accomplish this object and secure a just equality of taxation, as contemplated by said 12th Section, it was necessary for the Legislature to pass laws for the appointment of officers to revise and correct the assessment made by the president of said railroad company.

It had become apparent that the president of the railroad company in stating under oath the actual cash value of the railroad property and appurtenances, was acting as a judge in his own case and did not state the value at more than one-third of its actual cash value, so that the railroad property could not be assessed at the same rate at which the State assessed other real and personal property of *like value* as required by 12th Section.

The whole system of taxation in the State was liable to fall into confusion and work out the most gross injustice to taxpayers, unless the fraudulent statements of fictitious values by presidents of railroad companies were remedied by appointing officers composed of the Judges of County Courts, and Senators of the State Senate, to revise, correct, and equalize the values of property assessed in the State against all railroads.

That the Legislature had this power unless its exercise is ex-

pressly prohibited by the 12th Section of the Act as a contract, cannot be questioned. But there is no such prohibition.

There is no contract with the railroad company that the president of the company shall fix the value of the railroad property under oath, to the exclusion of all other persons, courts and jurisdictions. It is merely made the *duty* of the president of said company to furnish a sworn statement of the actual cash value of the railroad and appurtenances, so as to furnish the Auditor with a real actual value to assess the tax upon; but the State is not precluded from providing by proper legislation, other assessors to fix and revise the actual value of the property, if the president of the railroad company fails to perform his duty, as he has done in this case and in many others.

The railroad company has no *power* vested in its President to assess the taxable property of the railroad, to the exclusion of all other persons, and as the exercise of this power is necessary to the preservation of the sovereignty of the State, it cannot be limited or taken away except by express words to that effect, and there are no such words in the act. The act of 1849, section 20, does provide, however, that the operations of the company shall be *confined* to the business of making, managing and running a railroad, and doing such necessary acts as to carry it into successful operation.

It cannot reasonably be presumed that the 12th section was designed by the Legislature to repeal the 20th section of the act of 1849, or to vest the *sole* power of assessing the actual cash value of the Missouri railroad property in the President of said company, so as to limit the taxation to such value, without any power of revision.

It cannot be pretended that this duty of the President to state to the Auditor the actual cash value of the railroad property, under oath, is any part of the contract madé by the State, to exempt the railroads from taxation until the expiration of two years after their completion. The contract to exempt the railroad from taxation for the time agreed upon, has been fulfilled and satisfied.

The provision in question was designed to facilitate the State

in collecting its taxes on railroads. It was not intended to *limit* the tax to any statement the president of the railroad might make as to value, or to fix the tax at any particular sum, but to furnish the Auditor a source of information as to value upon which he could determine the tax. But no one will pretend that the State is bound by this method of ascertaining the actual value of railroad property in Missouri in such a manner that no other can ever be adopted by the State Legislature.

The present legislation does not in any way interfere with the *duty* of the President of the railroad company to make a sworn statement of the actual cash value of the railroad and appurtenances, as provided for in the 12th section, but it provides means for correcting such statements when they are false or fraudulent.

Is it not clear that the State could recover the taxes from the railroad company upon the actual cash value of the property, by an action, even if the President of the company should make oath to a statement to the Auditor that the property was only worth one-third of its actual value? If the "Auditor charged the company with the amount *appearing* to be due the State, according to the statement furnished as herein required by the President of the company," the State could recover the balance due as the taxes, if the actual value of the property were twice or thrice the value of the amount sworn to by the President of the company.

If this provision of the 12th section were a contract, such fraudulent returns by the President of the value of the railroad and its appurtenances at one-third of the actual value, would vitiate it, and the railroad company could not screen itself behind the provisions of that section. If there be a contract between the State and the railroad company, it must be performed in good faith, and the President of the company must perform his duty, and state, under oath, the true value of the railroad property, as required to do by the act. Still, such sworn statement of the President would not be a legal assessment of the railroad property, if any other mode were provided by the laws of the State for an assessment thereof.

But these provisions do not amount to any contract with the

State that the President of the company shall assess the railroad property to the exclusion of all other modes of assessment, as now claimed by the complainant. Upon a critical examination of section 12, Acts 1852, pp. 13, 14, it does not appear that anything contained therein binds the State to adopt the valuation of the President of the railroad company to the exclusion of all other modes of assessment.

The words are "and for the purpose of ascertaining the value of the same, it shall be the duty of the President of said company * * to furnish the Auditor of the State a statement, under his oath, * * of the value of the road-bed, buildings, * * and other property appertaining to such completed road, and from such statement so furnished, the Auditor shall charge said company with the amount appearing to be due to the State according to the statement furnished, as herein required, by the President of the company."

This sworn statement of the President is only a *mode* of ascertaining the value of the railroad property, which can be changed by the Legislature at pleasure, provided only that it be subjected to taxation in proportion to its value. The Constitution of Missouri, in force in 1852, Art. 13, Sec. 19, Rev. Code of Missouri, 1845, p. 45, ordains: "That all property, subject to taxation in this State, shall be taxed in proportion to its value."

The 12th Section of the act of 1852 professes to adopt this constitutional provision by declaring that after two years from the completion of the railroad, its property "shall be subject to taxation at the actual cash value thereof, at the rate assessed by the State on other real and personal property of *like* value"; but if the construction of the act be as claimed by the complainants, then the president of the railroad company has the exclusive right to fix the actual value of the railroad property at any sum he pleases forever, in direct violation of the plain command of the Constitution. It would be a violation of the Constitution of 1845, to hold that the president of the company could have any vested rights by legislation in 1852 to fix the valuation of the railroad property at any sum he chose, for all time to come, for

it is the purpose of that Constitution to secure equality of taxation, of rate, and of valuation, by requiring general laws for the assessment of all the property in the State, so that it may be taxed "in proportion to its value."

It is admitted that this railroad property was subject to taxation from the 7th of April 1868, and § 12 expressly declares it "*shall be subject to taxation* at the rate assessed by the State on other real and personal property of *like* value"; * * but the appellants insist that the *mode* of assessment by the sworn statement of the president of the company, must continue forever, and that the Legislature has no power to provide any other *mode* for the assessment of Pacific Railroad property.

The appellants rely upon an *obiter dictum* in the case of *Hannibal and St. Jo Railroad Co.* vs. *Shacklett*, 30 Mo. 555, (1860,) that § 12 "expressly and in terms exempts the "Pacific Railroad from taxation, unless in the mode and at the "time specified." The court in that case was passing upon the exemption of another railroad and this accounts for the extraordinary declaration, that § 12 of the Pacific Railroad act, "exempted the Pacific Railroad property from taxation."

The precise difference between the Hannibal & St. Jo. Railroad act and the Pacific Railroad act, is in the plain declaration of § 12 that after the expiration of two years the Pacific Railroad property of every description "*shall be subject to taxation* at the rate asse sed by the State on other real and personal property of like value."

The case of the Hannibal & St. Jo. R.R., 37 Mo., 266, has no bearing upon the questions at issue in this case, and does not seem to have approved the *obiter dictum* in the Shacklett case.

When Shacklett's case was decided, there was no other *mode* provided by the Legislature, for assessing Pacific Railroad property, than the one contained in § 12, and the question did not arise and was not discussed, whether the Legislature had the power under the Constitution of 1845, to create an uniform system for the assessment of all railroad and other property in the State, so that it "shall be taxed in proportion to its value," as ordained by the Constitution of 1845. The Constitution of

1855 contains the same clause, and the new Constitution of 1865 prohibits the exemption of any property from taxation, except the property of Public Schools, of the State, of the United States, and of municipal corporations.

The cases cited by appellants do not pass upon any question arising in this cause, and the reference to the Pacific Railroad act of 25th Dacember, 1852, pp. 13, 14, is so clearly a mistake that no argument is necessary te show it to be so.

In 1869, when the assessment was made, under the general laws of the State, upon the property of the railroad company, another *mode* had been provided for the assessment of railroad property, and although the President of this company was still required to return to the Auditor a sworn statement of the value of the railroad property each year, the Assessors of the counties have made assessments of the railroad property and all other property under the general revenue laws, so as to secure the uniform taxation of all property in the State, "in proportion to its value," as required and commanded by the Constitution of 1845.

It is only since the passage of the laws for the assessment of the Pacific Railroad and other railroad property "at the rate assessed by the State on other real and personal property of *like* value." as required by § 12, Acts of 1852–'53, pp. 13, 14, that the question has arisen, whether the Legislature has the power to establish an uniform system for the assessment and collection of taxes on railroads and all other property in the State, by any new *mode* that shall be uniform and adapted to that purpose.

Since 1868 the president of the Pacific Railroad Co. has annually made his sworn statement for the auditor, and the assessors of the counties through which the road runs, have assessed the Pacific Railroad property and all other property, according to the Constitution of 1845 and the § 12 of said act, and it appears that a great discrepancy exists between the valuation of the railroad president and the valuation of the same property by the sworn assessors of the different counties.

The difference is about as one to two, between the disinterested assessments of the public officers of the counties and the private valuation of the same railroad property by its own president. If

this fraudulent system should be approved by the court, there will be good reason to apprehend that the valuation of future presidents of this company, might not exceed one-tenth part of the assessed value of other property of *like* value, in the State, and by such means, the Pacific Railroad would become virtually exempted from just and constitutional taxation, in direct violation of said § 12 of said act.

The question is therefore fairly presented in this cause, whether the Legislature has the power to pass laws, providing a different mode for the assessment and collection of taxes on the Pacific Railroad property, from the one provided in § 12, for the valuation of the railroad property by the president of the company.

The Legislature was prohibited by the Constitution of 1845, from enacting any law providing for any assessment of any property in any other manner than such an one as would require it to "be taxed in proportion to its value;" and the § 12 of said act, drawn with reference to this constitutional limitation, declares that all the Pacific Railroad property "at the actual cash value thereof, *shall be subject to taxation at the rate* assessed by the State on other real and personal property of like value;" * * and makes it the *duty* of the president of the company, to furnish the auditor annually, a sworn statement of the actual value of the railroad property.

The appellants insist, that § 12 having provided a mode for ascertaining the value of the Pacific Railroad property by the sworn statement of the president of the company, the Legislature is precluded forever from adopting any other mode than the absurd one provided in § 12, for State taxation only.

The authorities establish the proposition that unless § 12 contains an express prohibition to the exercise of the sovereign power of the Legislature over the subject of the assessment and taxation of the railroad property, within the limitations of the Constitution of 1845; that sovereign power remained, and was exercised in 1868 by the Legislature, in providing another *mode* for the assessment of the Pacific Railroad property.

Delaware Railroad Tax Case, 18 Wall, 226.

North Missouri Railroad Co. vs. *Magwire*, 49 Mo. 490. *Trask* vs. *Magwire*, 18 Wall, 401, and cases heretofore cited.

It is claimed by appellants that only a State tax can be levied or assessed on the Pacific Railroad property, because it is the only tax mentioned in Section 12. It would be more accurate for the appellants to say that the only *mode* for valuing the said property given in the § 12, is a sworn statement of the president of the company to the Auditor, on which a State tax is to be charged by the Auditor, which is to be paid to the Treasurer, and that no mode is provided for the assessment of county or municipal taxes.

This taxation must be made, as on all other property in the State, in all the forms deemed necessary for the support of the government, and the Legislature had the power to provide all necessary modes for assessing and levying taxes necessary for the support of the government.

It would be a forced construction to hold, that the State tax is the only tax that can be collected, because the only mode provided in § 12 for ascertaining the value of the railroad property for the Auditor, has reference to the collection of a State tax.

All exemptions from taxation being removed by express words in the § 12, and all the railroad property being subjected to taxation as other real and personal property in the State of *like* value, the power of the Legislature is unlimited to establish modes, rates, and means for assessing and collecting the taxes on such railroad property—and no terms or phrases in the § 12 limit the general power of the Legislature to direct the assessment and collection of such taxes for State, county and municipal purposes.

State for Pacific Railroad Co. *vs.* Dulle, 48 Mo., 286—51 Mo., 144; Pacific Railroad Co. *vs.* Cass County, 53 Mo., 26, and other cases cited *supra*.

The late cases in this Court and the State courts, all favor this rule of construction, and the case of Delaware Tax, 18 Wall., 226, is directly in point as the last decision of this high tribunal on this subject.

The power of the people to control and direct the prudent management of the State government, for the common benefit of all the citizens, is a continuing power from year to year, so long as the government exists, as a co-operative representative government of laws, as contra-distinguished from one of prerogative right or despotic power.

The Constitution of Missouri, of 1865, prohibits the Legislature from sacrificing the interests of the present and future generations of our people, by making legislative contracts with any corporations or persons exempting their property from taxation. The only property that is now exempted from taxation, is that belonging to the Public Schools, the United States, the State, and municipal corporations.

This is the most valuable limitation of legislative power ever ordained in the State of Missouri. It was necessary to preserve the resources of the State, to pay the expenses of government, to eqnalize taxation, and reduce the burdens of tax payers. The State government, springing from the people, is mortal, for it may be changed or modified in accordance with the will of the people, but the railroad and other corporate monopolies claim to be immortal and forever exempt from taxation or other burdens, if they are able to procure contracts from legislatures in perpetuity.

The present claim of appellants is one of perpetual exemption from county and municipal taxation, to avoid contributing in just proportion to the future wants and necessities of the people of the State. It is a claim of everlasting prerogative privilege, to be denied to the people, but to be enjoyed by a few favored monopolists forever.

In view of these high prerogative claims of the Pacific Railroad Company, to the exemption of its property from taxation, the courts have long since felt the necessity of adopting a strict rule of construction of all Legislative contracts for such purpose.

A powerful and learned opinion of Mr. Justice Campbell, in the case of Dodge vs. Woolsey, 18 How 231, denying the power of the Legislature of Ohio to make a special contract of exemption in 1845, in favor of a branch bank of the State Bank of

Ohio, prohibiting any mode of taxation of the property of that bank, except by a tax on the net profits, and binding the State to that mode for all time to come, proves that this court long ago foresaw the great dangers to be apprehended from such legislation.

In the Delaware tax case, 18 Wall, 226-7, this court declares that if the court were not bound by adjudged cases, the power of a State Legislature, to make contracts with persons or corporations exempting property in the State from future taxation would be denied.

While the manufacturing, commercial, and agricultural interests of the State would remain subject to all the burdens of taxation, the monopolists, the bondholders, the railway, telegraph, and other powerful corporations would escape them all, by so called contracts, that are never founded upon any sufficient consideration. It is a noted fact in the history of American State Legislation, that wherever great corporations acquire from State governments a franchise, or a portion of the State's sovereignty, as railway, telegraph or other corporations, they soon commence besieging the Legislature for additional franchises and prerogative rights, and continually enlarge their granted powers by usurpations, until at last, they boldly essay to control the government itself by bribery and corruption, and too often succeed in using the law-making department of the State for their own exclusive benefit. This growing despotism and usurpation must soon be arrested, or a revolution will inevitably come and sweep the whole system of usurpation, corruption and despotism away, to the utter ruin and destruction of all parties concerned.

By the rule established in the Delaware Tax Case, 18 Wall, *supra*, and the cases of Dulle, 48 Mo., 286, and Cass County, 53 Mo., 26, there cannot be any contract made out by any fair construction of § 12 of act of 1852, that will preclude the State Legislature from providing another mode for collecting and assessing taxes on the Pacific Railroad property or its Southwest Branch, after the exemption from taxation has ceased by the completion of the road and the expiration of two years thereafter.

It is therefore demonstrated that the provisions of said 12th

Section do not exempt the Pacific Railroad property after the 7th day of April, 1868, from assessment or taxation in the mode provided for by the act of 19th March, 1866, in force when this suit was brought. That Act subjects the property real and personal of the Pacific Railroad Company to the assessment for, and payment of, State, county, and municipal taxes, at the same rate and valuation of all other taxable property in the State of Missouri.

The decree below should be affirmed, and the judgments in the other cases should be affirmed.

St. Louis, March 19th, 1875.

BRITTON A. HILL,

Of Counsel for the State of Missouri.

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